राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 19 जून, 2018 / 29 ज्येष्ठ, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 14th May, 2018

No. Shram (A) 6-1/2018 (Awards).—In exercise of the powers vested under Section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Reference/ Application	Title	Section
1.	Ref. 174/2017	Sh. Harpreet Singh *V/s.* M/s Fujikawa Power, Nalagarh	10
2.	Ref. 59/2016	Sh. Sandeep Kumar *V/s.* The Registrar, H.P. University & Anr.	10
3.	Ref. 82/2016	Sh. Yash Pal *V/s.* The Executive Engineer, H.P. State Electricity Board, Shimla.	10
4.	Ref. 61/2016	Sh. Khub Chand *V/s.* Sr. Executive Engineer, HPSEB Ltd. Shimla	10
5.	Ref. 60/2017	Van Vibhag Karamchari Sangh & Anr. *V/s.* The DFO Chopal.	10
6.	Ref. 108/2017	Sh. Roshan Lal *V/s.* The Divisional Forest Officer, Shimla & Anr.	10
7.	Ref. 115/2016	Sh. Het Ram *V/s.* The Resident Engineer, HPSEB, Division Jeori, Ganvi Power House, Distt. Shimla, H.P.	10
8.	Ref. 86/2017	Sh. Salig Ram *V/s.* The Resident Engineer, HPSEB, Division Jeori, Ganvi Power House, Distt. Shimla, H.P.	10
9.	Ref. 29/2016	Sh. Mohan Lal *V/s.* The Secretary, (HPPWD) to the Govt of H.P.& Anr.	10
10.	Ref. 45/2017	Sh. Karam Dass *V/s*. Senior Engineer, HPSEB Ltd. Electrical Division Rampur Bushehr.	10
11.	Ref. 78/2016	Sh. Ram Bahadur *V/s.* Divisional Forest Officer, Wild Life Division Shimla, H.P.	2-A
12.	Ref. 107/2017	Sh. Yog Raj *V/s.* The Divisional Forest Officer, Forest Division Shimla, H.P.	—
13	Ref. 120/2010	Sh. Harvinder Singh *V/s.* Pradhan Vishal Himachal Taxi Operator Union, Shimla.	—
14.	Ref. 136/2017	Ms. Asha Devi *V/s.* The Registrar, LLR Group of Institute, Village Jabli Kyar, P.O. Oachghat, Tehsil & Distt Solan, H.P.	—

By order,

Nisha Singh, IAS,
Addl.Chief. Secretary (Lab. & Emp.).

23.03.2018

Present: Petitioner in person.
Sh. Rajeev Sharma Ld. Csl. for the respondent.

At this stage it has been stated by the petitioner that he had settled the matter with the respondent out of court and the respondent had handed over to him a cheque bearing No-503512, dated 16.09.2017 drawn on State Bank of India Nalagarh in the sum of Rs. 3,00,000/-(Three Lacs) *vide* settlement Ex. P-1 only as full and final amount of legal dues. He further stated that the petitioner has now no dispute with the respondent arising out of the present reference.

Similarly it has been stated by the Ld. Csl. for the respondent that the respondent had settled the matter with the petitioner out of court and paid him an amount of Rs. 3,00,000/-(Three Lacs) only by way of Cheque No-503512, dated 16.09.2017 drawn on State Bank of India Nalagarh *vide* settlement Ex. P-1, which has been handed over to the petitioner and now the petitioner has no dispute with the respondent arising out of the present reference.

Therefore, in view of the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of the parties. The settlement Ex. P-1 and the statements of the parties shall form a part of this award/order. The reference is answered accordingly. Let, a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to record.

Sd/-

Announced: (SUSHIL KUKREJA)
23.03.2018 *Presiding Judge, Labour Court, Shimla.*

3.3.2018

Present: None for petitioner.
Shri Ranvir Chauhan, Advocate for respondents.

It is 10.55 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for petitioner.
Shri Ranvir Chauhan, Advocate for respondents.

It is 12.50 P.M. Case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for petitioner.
Shri Ranvir Chauhan, Advocate for respondents.

It is 3.20 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court. For today, the case has been listed for the evidence of the petitioner but neither the petitioner nor his counsel appeared before this Court despite the fact that the case has been called several times which clearly shows that the petitioner is not interested to pursue his case arising out of the present reference. Therefore, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"Whether termination of the services of Shri Sandeep Kumar s/o Shri Dhani Ram, Village Samlehda, P.O. Bagwada, Tehsil Bhoranj, Distt. Hamirpur, H.P. by i) The Registrar, Himachal Pradesh University, Shimla-5, H.P. ii) The Co-Ordinator, Nodal Centre for Computer Application. Physics Department, H.P.U. Shimla-5, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?"

In support of the aforesaid reference, the petitioner has filed the statement of claim on 31.12.2016 and thereafter by filing reply the respondents denied the allegation leveled in the claim petition. Then this Court vide order dated 3.10.2017 framed the following issues.

(1) Whether the termination of the services of the petitioner by the respondents without complying with the provisions of Industrial Disputes Act 1947 is illegal and unjustified? *OPP.*

(2) If issue No. 1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? *OPP.*

(3) Whether the petition is not maintainable as alleged? *OPR.*

(4) Relief.

I have heard the learned counsel for the respondents and also gone through the record of the case.

The perusal of record reveals that after framing of aforesaid issues, the petitioner was allowed to lead evidence but despite affording various opportunities, the petitioner has failed to lead any evidence. Today, neither the petitioner appeared before this Court nor he has brought any evidence in support of his case. Therefore, in the absence of any evidence on record, it cannot be said that termination of the services of the petitioner by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified. Accordingly, issues No. 1 and 2 are decided against the petitioner.

During the course of arguments the learned counsel for the respondents has not pressed issue No. 3, hence, this issue is decided against the respondents.

Therefore, in view of my aforesaid discussion, the claim filed by the petitioner fails and is hereby dismissed with the result, the reference is decided against the petitioner and answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Sd/-

Announced:
3.3.2018

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref No. 82 of 2016
Instituted on 7.9.2016
Decided on 29.3.2018

Yash Pal Son of Late Shri Uttam Chand, Resident of Village Pahar, P.O. Dhar, Tehsil Jubbal, District Simla, H.P. ..*Petitioner.*

Vs.

Himachal Pradesh State Electricity Board, Through its Executive Engineer, Division Jubbal, District Shimla, H.P. ..*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Surinder Steta, Advocate.

For respondent : Ms. Kiran Mehta, Advocate vice Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Yash Pal Sharma s/o Late Shri Uttam Chand, r/o Village Pahar, P.O. Dhar, Tehsil Jubbal, Distt. Shimla, H.P. during February, 1999 by the Executive Engineer, Electrical Division HPSEBL, Jubbal, Distt. Shimla, H.P, who had worked as beldar from 1993 to 1999 on daily wages and has raised his industrial dispute after about 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period from 1993 to 1999 and delay of about 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that he had joined the respondent on daily wage muster roll basis in the month of Jan., 1993 and remained as such till Jan., 1999 and thereafter in the month of Feb., 1999, his services were illegally terminated by the respondent without assigning any reasons. It is further stated that the services of Dharminder Singh who was working with the petitioner on daily wage muster roll basis in the same Division were regularized but the services of the petitioner were orally terminated on the assurance that he will be re-engaged after some time but of no avail and even the petitioner had made various requests to the respondent for his reengagement but nothing has been heard. It is also stated that the respondent had engaged junior persons in violation of the provisions of section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) but the services of the petitioner have been terminated without issuing any notice as required under section 25-F of the Act. Against this back-drop a prayer has been made that the respondent be directed to reengage the services of the petitioner with all consequential benefits such as continuity in service, back wages and compensation.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* suppression of material facts from this Court, maintainability, that the claim petition is hopelessly time barred, and estoppel etc. On merits, it has been asserted that the petitioner was engaged as daily wage labourer on 26.8.1993 and he worked up till 20.2.1999 with breaks as he had been engaged for specific work and for specific period and on the completion of work he had been discharged from duties. It is further asserted that the petitioner had not completed 240 days in the preceding 12 months and no junior to him has been retained in the Division. It is also asserted that since the petitioner had not completed 240 days in 12 months from the date of his discharge from duties, hence, he is not entitled for any termination notice or any compensation and the provisions of Sections 25-F, 25-G and 25-H of the Act are not attracted in this case. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 19.6.2017.

(1) Whether the termination of the services of the petitioner by the respondent during Feb., 1999 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? *OPP*...

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? *OPP*...

(3) Whether the petition is not maintainable as alleged? *OPR...*

(4) Whether the petition is time barred as alleged? *OPR...*

(5) Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No

Issue No. 2 Becomes redundant

Issue No. 3 No

Issue No. 4 Yes

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1 & 4 :

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned vice counsel for the respondent contended that the claim of the petitioner is highly belated and stale. She further contended that the services of the petitioner were never terminated by the respondent rather he has been discharged from his duties on the completion of specific work against which he was engaged and even he had not completed 240 days in any calendar year. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

10. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he admitted that he was engaged on 26.1.1993 and worked till 20.2.1999. He denied that he had not completed 240 days in any calendar year. He further denied that the Board had never engaged fresh hands and had never retained any junior after 20.2.1999. He admitted that he had raised the demand notice after 20 years.

11. On the other hand, the respondent has examined Shri Ramesh Chand Verma, Assistant Engineer as RW-1, who deposed that the petitioner was engaged with the board as daily wager on 26.8.1993 and he had worked till 20.2.1999 and tendered in evidence the mandays chart of petitioner ex. RW-1/A. He further deposed that the petitioner had never completed 240 days in any calendar year and no junior to him was engaged by the board. In cross-examination, he denied that the mandays chart Ex. RW-1/A is not based on record. He further denied that the petitioner had completed 240 days in every calendar year. He admitted that Dharmender Singh who was junior to the petitioner was re-engaged by the board but volunteered that he was re-engaged by the orders of the Court.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as daily wage labourer by the respondent on 26.8.1993 and he worked as such till 20.2.1999 as is evident from the mandays chart Ex. RW-1/A. The perusal of mandays chart goes to show that the petitioner had worked for 31 days in the year 1993, 246 days *w.e.f.* 26.12.1993 to 25.12.1994, 18 days in the year, 1995, 174 days in the year, 1996, 11 days in the year, 1997, 11 days in the year, 1998 and 10 days in the year, 1999. Therefore, from the mandays chart Ex. RW-1/A, it is clear that the petitioner had not completed 240 days in preceding twelve calendar months.

13. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

14. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 14 years. According to the petitioner he was terminated in the year, 1999. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 14 years. Therefore, the position of law in respect of a stale claim is required to be seen.

15. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D. Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:**

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

16. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in**

approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

In Haryana State Coop. Land Development Bank *Vs.* ***Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

> 13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs*. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15" In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

> 5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82: 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].
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> 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16"Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

> "6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17"In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (supra) , opined :

> "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."
>
> (Emphasis supplied).

17. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** Vs. **Babu Ram, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:**

> "10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

18. **In Assistant Engineer, CAD Kota** Vs. **Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

19. In **UP State Road Transport Corporation** *Vs.* **Ram Singh and another** (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and**

there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

20. **In (2009) 13 SCC 746, State of Karnataka *Vs.* Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

21. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26.10.2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* 20.2.1999 and he raised the present dispute after a period of more than 14 years. In his affidavit by way of evidence Ex. PW-1/A, the petitioner has stated that after his termination he was assured by the respondent that he would be re-engaged after some time and even he had made various requests to the respondent but nothing has been heard by the respondent. However, except for his bald statement there is no other evidence on record to suggest as to when the respondent had given him assurance and even he has failed to place on record such request/representation filed by him before the respondent for his reengagement. He further stated in his affidavit Ex. PW-1/A that his uncle expired in the year, 2001 and thereafter his brother expired in the year, 2004 and he remained under mental shock due to their death. However, in his claim petition he stated that his father expired in the year, 2001. Therefore, in the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 14 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, from the perusal of mandays chart Ex. RW-1/A and evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence*** apart from examining himself to prove the factum of being in employment of the employer."

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of Section 25-F can be granted to the petitioner.

26. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his junior namely Dharmender Singh who was working with the petitioner in the same division and his services have been regularized. He further contended that the respondent had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". However, in cross-examination RW-1 admitted that Dharmender Singh who was junior to the petitioner was reengaged by the board only upon the orders of the Court. Moreover, as observed earlier, the petitioner had raised the demand notice after a period of 14 years as such there is no question of consideration of equal treatment with his junior who had allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon 'ble Hi gh Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioner cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 14 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of Sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 14 years.

27. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 14 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2:

28. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 3:

29. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 29th day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF Sh.SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref No. 61 of 2016

Instituted on 18.7.2016

Decided on 6.3.2018

Khub Chnad s/o Shri Man Singh, Resident of Village Koti, P.O. Khaneol Bagra, Tehsil Karsong, District Mandi, H.P. *Petitioner...*

Vs.

1. Sr. Executive Engineer, HPSEB, Ltd. division Shimla, District Shimla, H.P.

2. Assistant Engineer, HPSEB, Ltd. Division Charli Villa, Sub-Division earlier Mashobra, now Kasumpti, Shimla-9 *Respondents...*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Naresh Sharma, Advocate vice Shri Neel Kamal Sood, Advocate.

For respondents : Shri Gaurav Sharma, Advocate vice Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Khub Chand Verma (Khub Ram) s/o Shri Man Singh, r/o Village Koti, P.O. Khaneol Bagra, Tehsil Karsog, Distt. Mandi, H.P. during February, 1993 by the Senior Executive Engineer, Shimla Electrical Division No. 1, HPSEB, Ltd. Shimla-171009, who had worked as Beldar on daily wages only for 62 days during 1992-93 and has raised his industrial dispute after about 21 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 62 days and delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially in the year, 1992 he was appointed as Class-IV employee on daily wages basis with the respondents and worked as such till 1994 regularly and he had completed 240 days during the course of his job. It is further asserted that the services of the petitioner were illegally terminated by respondents without any rhyme or reason whereas many juniors namely Rajesh Kumar, Prem Singh, Molak Ram, Devi Ram, Mahinder and Bhim Singh were retained after his termination and even fresh persons have been engaged and the petitioner was not re-engaged. The services of the petitioner were terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions sections 25-G, 25-H and 25-F of Industrial Disputes Act, 1947

(hereinafter referred as to Act). Against this back-drop a prayer has been made that directions be issued to the respondents to re-instate the petitioner in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, suppression of material facts, abandonment of job, that the petition is hit by the vise of delay and latches etc. On merits, it has been asserted that the petitioner was engaged on muster roll basis in Electrical Sub- Division HPSEBL Mashobra during December, 1992 and remained with job upto Feb., 1993 instead of 1994 in different spells and thereafter he left the job at his own without any intimation to the respondents and since, the petitioner had worked for 62 days in different spells, hence, there is no violation of the Act. It is further asserted that no junior persons were engaged by the respondents except only few workers who were engaged on daily wages with respondents on specific judicial orders of competent court. The respondents prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 19.6.2017.

(1) Whether the termination of the services of the petitioner during Feb., 1993 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ……. *OPP*

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ……..*OPP*

(3) Whether the claim petition is not maintainable? ……..*OPR*

(4) Whether the claim petition is hit by delay and laches as alleged? ……..*OPR*

(5) Relief

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1	No.
Issue No. 2	Becomes redundant.
Issue No. 3	No.
Issue No. 4	Yes.
Relief.	Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1 & 4

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under Section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned counsel for the respondents contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

10. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 to depose that he had been working with the respondents from the year, 1992 and worked till the year, 1994 at HPSEB Sub Division Mashobra. He further stated that he had completed more than 240 days in a calendar year and his services were terminated in the year, 1994 and at the time of his termination, he was assured that he would be called back to resume his duties. He also stated that neither any notice nor any compensation was paid to him prior to the termination and after his termination the persons namely Rajesh Kumar, Prem Singh, Bhim Singh, Mahinder, Devi Ram and Molak Ram were retained by the respondents who were junior to him. In cross-examination he admitted that he had not completed 240 days in any calendar year. He denied that he had worked only for 62 days. He further denied that no junior persons were retained and no fresh hands have been engaged. He admitted that he had raised the demand notice after 23 years.

11. On the other hand, the respondents have examined Shri Hemant Kumar Senior Assistant, Electrical Division No. 1 Kasumpati Shimla as RW-1 who deposed that *vide* authority letter Ex. RW-1/A, he has been authorized to make the statement before this Court. He further stated that the petitioner was engaged on 26.12.1992 as Beldar on muster roll basis and he worked till 25.2.1993 only for 62 days and he had never completed 240 working days in any year. He also stated that the Board had not engaged any junior to the petitioner except on the orders of the Courts and amongst the disabled quota of 3% and the present claim has been filed by the petitioner after 24 years. In cross-examination, he denied that the petitioner had completed 240 days in a calendar year. He admitted that no compensation has been paid to the petitioner prior to his termination but volunteered that the same was not required as he had worked only for 62 days. He denied that the juniors and fresh hands namely Rajesh Kumar, Prem Singh, Molak Ram, Devi Ram, Mahinder and Bhim Singh have been engaged after the termination of the petitioner.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 62 days as daily waged beldar with the respondents *w.e.f.* 26.12.1992 till 25.2.1993 whereas the petitioner has alleged his termination to be illegal *w.e.f.* the year, 1994 but to this effect no documentary evidence has been led by him. Moreover, he himself as PW-1 has admitted that he had not completed 240 days in any calendar year. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

13. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 21 years. According to the petitioner he was terminated in the year, 1994. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 21 years. Therefore, the position of law in respect of a stale claim is required to be seen.

14. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D. Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:**

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

15. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167, the services of the employees were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:**

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* UP SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

16. ***In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service w.e.f. 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

> 13 "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."
>
> 14."The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."
>
> 15" In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :
>
> 5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82: 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].
>
> 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the

Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16 "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* UP SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17."In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (supra) , opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

17. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** Vs. **Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within

reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

> "10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

18. **In Assistant Engineer, CAD Kota** *Vs.* **Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

> "9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

19. In **UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

20. **In (2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not

work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

21. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26.10.2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* the year, 1994 and he raised the present dispute after a period of more than 21 years. In his statement as PW-1, the petitioner has stated that after his termination he was assured by the respondents that he would be called back to resume his duties. However, except for his bald statement there is no other evidence on record to suggest as to when the respondents had given him assurance. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 21 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 21 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> "The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

In AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the ***Hon'ble Supreme Court has held that:—***

"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, the petitioner as PW-1 himself admitted in cross-examination that he had not completed 240 days in any calendar year. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

25. The learned counsel for the petitioner next contended that the respondent had taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon 'ble S up reme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondent to lead evidence and to bring witnesses or to place documents on record to prove after 21 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 21 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 21 years as the delay in the present case is certainly fatal.

26. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". However, except for the bald statement of the petitioner that after termination of his services, the persons namely Rajesh Kumar, Prem Singh, Bhim Singh, Mahinder, Devi Ram and Molak Ram were retained by the respondents who were his juniors, no other evidence has been led by the petitioner to this effect. No documentary evidence has been placed on record by the petitioner that after his termination, his juniors were retained. Moreover, as observed earlier, the petitioner had raised the demand notice after a period of 21 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon 'ble Hi gh Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani Vs. HPSEB wherein it has been held that the petitioners cannot claim equal treatment after about two**

decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 21 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 21 years.

27. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 21 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2

28. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 3

29. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 6th day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

3.3.2018

Present: None for petitioner.
Shri H.N Kashyap, ADA for respondent.

It is 10.50 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for petitioner.
Shri H.N Kashyap, ADA for respondent.

It is 12.55 P.M. Case called again but none appeared on behalf of the petitioner. Be called after lunch.

Sd/-

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for petitioner.
Shri H.N Kashyap, ADA for respondent.

It is 3.25 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel has appeared before this Court. For today, the case has been listed for filing of rejoinder on behalf of the petitioner but neither the petitioner nor his counsel appeared before this Court despite the fact that the case has been called several times which clearly shows that the petitioner is not interested to pursue his case arising out of the present reference. Therefore, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

"Whether demand of President & General Secretary, Van Vibhag Karamchari Sangh Chopal Van Mandal, Distt. Shimla, H.P. vide **demand notice/letter dated 14.1.2015 & 21.4.2015 (copies enclosed) raised before and to be full filled by the Divisional Forest Officer, Chopal, Distt. Shimla, H.P. to consider/accord seniority to Shri Mast Ram s/o Shri Kali Ram (posted at Forest Rest House Manalg), r/o Village Jhoker, Tehsil Kupvi, Distt. Shimla, H.P. *w.e.f.* November 1993 instead of the year, 1998, is legal and justified? If yes, what relief of service benefits the aggrieved workman is entitled to from the above employer?"**

From the aforesaid reference is the clear that the petitioner Mast Ram has raised the demand notice through President and General Secretary, Van Vibhag Karamchari Sangh Chopal Van Mandal Shimla *vide* demand notice/letter dated 14.1.2015 and 21.4.2015 raised before and to be fulfilled by the Divisional Forest Officer, Chopal (respondent) to consider/accord seniority to him *w.e.f.* November, 1993 instead of the year, 1998 but despite the case having been called several times neither the petitioner nor anyone on his behalf appeared before this Court. Since, the petitioner has failed to appear before this Court and to place on record any material in support of his claim petition, therefore, in the absence of any material on record, it cannot be said that the demand raised *vide* demand notices/letters dated 14.1.2015 and 21.4.2015 before the respondent to consider/accord seniority to petitioner *w.e.f.* November, 1993 instead of the year,

1998 is legal and justified. Hence, the reference is decided against the petitioner and answered in the negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Sd/-

Announced:
3.3.2018

(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref . No. 108 of 2017
Instituted on 3.7.2017
Decided on 16.3.2018

Roshan Lal son of Shri Devinder, Resident of Village Sakrari, Post Officer Chabha, Tehsil Sunni, Distt. Shimla, H.P.

.....Petitioner.

VS.

1. The Divisional Forest Officer, Forest Division Shimla, Mist Chamber Shimla, District Shimla, H.P.

2. The Ranger Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.

...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Kumar, Advocate.

For respondents : Shri Mahender Singh, ADA.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of services of Shri Roshan Lal s/o Shri Devinder, VillageSakrari, P.O. Chabha, Tehsil Sunni, Distt. Shimla, H.P. *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla, Distt. Shimla, H.P., allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1.1.2005, he was engaged as daily rated beldar by the respondents and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty and to the entire

satisfaction of his superiors and there had been no complaint what-so-ever with regard to his work and conduct. It is further averred that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice and that too without assigning any reasons and even the respondents were giving fictional breaks willfully to the petitioner in order to deprive him the status of permanent workman. It is also stated that the petitioner had worked continuously without any break and had completed more than 240 days in each calendar year and also preceding to the date of his illegal termination. That before dispensing with the services of the petitioner neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given nor he was paid any retrenchment compensation, hence, his termination is against the provisions of section 25-F of the Act. That the regular work is available in Sunni Range and before terminating the services of the petitioner no opportunity of being heard was afforded to him and even juniors to him S/Shri Nek Chand, Om Prakash, Tej Ram, Thakur Singh, Hem Chand etc., are still working with the respondents which is totally against the provisions of sections 25-G and 25-H of the Act. Against this back-drop a prayer has been made that he be reinstated in service with seniority, back wages and regularization. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the Policy of the State Government.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been that qua maintainability and delay and laches. On merits, it has been asserted that the petitioner was initially engaged during the year, 2005 to carry out the seasonal forestry works in Bhajji (Sunni) Range of Shimla Forest Division and he had not completed 240 days in any calendar year and thereafter he had left the work and since the petitioner had not completed 240 days in any calendar year hence, as per the policy of the State Government he is not entitled for regularization. It is denied that the services of the petitioner were orally terminated by the respondents. It is asserted that the petitioner is still working in the department on bill basis as per availability of funds. That *w.e.f.* 2005 to 2011, the petitioner had worked on muster roll basis and thereafter he was engaged on bill basis keeping in view the instructions of the Government regarding execution of works on sanctioned schedule of rates. That since the services of the petitioner were never terminated by the respondents, hence, the issuance of notice under section 25-F of the Act does not arise at all. It is denied that the juniors to the petitioner are still working with the respondents. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder the petitioner reiterated his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 1.11.2017.

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified?

OPP…….

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to?

OPP…….

(3) Whether the petition is not maintainable as alleged?

OPR…….

(4) Relief.

6. I have heard the learned counsel for the petitioner and learned ADA for respondents and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1 No

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Relief. Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1

8. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of seniority list mark X, mandays chart mark Y and the copy of information obtained from the respondents under RTI Act mark Z. In cross-examination, he admitted that the department used to call him on the availability of work. He further admitted that after the year, 2016, he had also worked with the respondents. He also admitted that he was engaged by the department on bill basis. He denied that he had not completed 240 days in any calendar year. He further denied that in the Bhaji Range no continuous work is available after the completion of Kol Dam Project. He admitted that Nek Chand and Om Prakash were engaged upon the orders of the Court. He denied that he used to leave the work at his own. He further denied that there is seasonal work in Bhaji Range. He also denied that he is not entitled for regularization.

9. Shri Devi Singh, Deputy Ranger appeared into the witness box as PW-2 to depose that the name of the petitioner is reflected in the seniority list *w.e.f.* year 2005 till the year, 2011 and thereafter his name is not reflected in the seniority list as he was working on bill basis.

10. On the other hand, the respondents have examined Shri Ramesh Chand, Range Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B. In cross-examination, he admitted that the petitioner was engaged in the year 2005 as daily wager and he worked till 29.2.2016. He denied that the petitioner had completed 240 days in each calendar year. He further denied that the services of the petitioner were terminated on 29.2.2016. He admitted that neither any notice was issued nor any compensation was given to the petitioner prior to his termination. He denied that artificial breaks were given to the petitioner. He further denied that many junior persons to the petitioner were retained. He admitted that Sita Devi was regularized in the year, 2017.

11. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondents as daily wage beldar *w.e.f.* 7/2005 till the year 2011 as is evident from the mandays chart Ex. RW- 1/B. The perusal of mandays chart Ex. RW-1/B, goes to show that the petitioner had worked for 25 days in the year, 2005, 187 days in the year 2007, 211 days in the year, 2008, 89 days in the year,

2009, 228 days in the year, 2010 and 120 days in the year, 2011. The case of the petitioner is that he had completed 240 days in each calendar year and in twelve calendar months preceding his termination but in support thereof he has failed to place on record any documentary evidence which could go to show that the petitioner had completed 240 days in each calendar year and in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in each calendar year and in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in each calendar year and in twelve calendar months preceding his termination no evidence has been led by the petitioner to contradict the muster roll Ex. RW-1/B tendered in evidence by the respondents. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

12. The learned counsel for the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondents. No documentary evidence has been placed on record by the petitioner which could go to show that the respondents have retained the persons junior to him. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

13. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the respondents and against the petitioner.

Issue No .2

14. Since, the petitioner has failed to prove issue No. 1 above, this issue becomes redundant.

Issue No. 3

15. In support of this issue, no evidence has been led by the respondents. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 16th day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref No. 115 of 2016
Instituted on 7.11.2016
Decided on 26.3.2018

Het Ram s/o Shri Amar Chand, r/o Village Makarchha, P.O. Chaba, Tehsil Sunni, District Shimla, H.P. .....*Petitioner.*

VS.

1. The Resident Engineer, H.P.S.E.B., Divison Jeori, Ganvi Power House, District Shimla, H.P.

2. Assistant Engineer, H.P.S.E.B., Sub -Division Jeori, Ganvi Power House, District Shimla, H.P. ...*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Naresh Sharma, Advocate.

For respondents : Ms. Kiran Mehta, Advocate *vice* Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Het Ram son of Shri Amar Chand r/o Village Makarchha, P.O. Chaba, Tehsil Sunni, Distt. Shimla, H.P. during December, 1995 by the Resident Engineer, Ganvi Power House Division, H.P.S.E.B. Jeori, Distt. Shimla, H.P., who had worked for 82 days only during 1994- 1995 and has raised his industrial dispute after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 82 days only during 1994-1995 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex- worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1993 he was appointed as Class-IV employee on daily wages basis with the respondents and worked as such till 1994 and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that after the appointment of petitioner, he worked at various places under respondent and his services were terminated without serving any prior notice under section 25-F of the Act and without paying any compensation. It is also stated that many persons namely Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umed Ram, Kanshi Ram, Om Prakash, Jiva Nand, Meen Chand, Sita Ram, Om Dutt, Ravinder, Hans Raj and Ranveer Singh who were juniors to the petitioner were retained violating the provisions of sections 25-G and 25-H of the Act and their services had been regularized and the services of the petitioner have been terminated despite the fact that he had completed 240 days in twelve calendar months and even preceding to the date of his oral termination. It is stated that the petitioner made several requests seeking re-employment by visiting the office of the respondents number of times but of no avail. Against this back-drop a prayer has been made that directions be issued to the respondents to re-instate the petitioner in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, that the petition is hopelessly time barred, and estoppel *etc*. On merits, it has been asserted that the petitioner was initially engaged on 25.9.1994 and worked as such till 24.12.1995 and his services were never terminated by the respondent who had left the job at his own and never turned up on work after 24.12.1995. It is further asserted that since the petitioner had not completed 240 days in each calendar year, hence, he is not entitled for any prior notice as required under the Act. It is denied that the persons junior to the petitioner were retained and after terminating his services, fresh hands were engaged. It is asserted that the alleged names of juniors referred by the petitioner are senior to him and after his abandonment he had never visited the HPSEBL authorities for his re- engagement. The respondents prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 1.7.2017.

(1) Whether the termination of the services of petitioner during December, 1995 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged?

OPP……..

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled?

OPP……..

(3) Whether the petition is not maintainable as alleged?

OPR……..

(4) Whether the petition is time barred as alleged?

OPR…….

(5) Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1	No
Issue No. 2	Becomes redundant
Issue No. 3	No
Issue No. 4	Not pressed
Relief	Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1

7. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

8. On the other hand, learned vice counsel for the respondents contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in any calendar year. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

9. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the certified copies of order of the Court Ex. PW-1/B and Ex. PW-1/C, the copy of order passed by the Hon'ble High Court in CWP No. 1668 of 2016 mark PX and list of juniors mark PY. In cross-examination, he denied that on 25.9.1994, he was engaged for doing specific work. He admitted that he had worked with the

respondents till 24.12.1995. He denied that he had worked only for 82 days. He further denied that he had not completed 240 days in any calendar year. He also denied that neither any junior was retained nor any fresh hands have been engaged by the respondents.

10. On the other hand, the respondents have examined one Shri Jagdish Chand, Junior Engineer, HPSEB Power House Chaba as RW-1 who stated that the petitioner was engaged as beldar on 25.9.1994 at Electric Division Kasumpati, Shimla and he worked with intermitted breaks upto 24.12.1995. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/A. He further deposed that the petitioner had worked only for 82 days and no juniors to him have been retained and no fresh hands have been engaged. He also stated that the petitioner had never completed 240 days in any calendar year. In cross-examination, he denied that the petitioner had completed 240 days in a calendar year. He further denied that the services of the petitioner were terminated without notice and compensation. He also denied that Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umeed Ram, Kanshi Ram, Om Prakash, Jeeva Nand, Ranvir Singh, Subhash Chand, Meen Chand, Bhupinder, Bhagat Ram, Sita Ram and Hans Raj were retained in service after the termination of the services of the petitioner and these persons are juniors to the petitioner.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 82 days as daily waged beldar with the respondents during the entire period *w.e.f.* 25.9.1994 to 24.12.1995 as is evident from the mandays chart Ex. RW-1/A. The perusal of mandays chart Ex. RW-1/A, goes to show that the petitioner had worked for 40 days in the year, 1994 and 42 days in the year, 1995. The case of the petitioner is that he had completed 240 days in each calendar year and in twelve calendar months preceding his termination but in support thereof he has failed to place on record any documentary evidence which could go to show that the petitioner had completed 240 days in each calendar year and in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in each calendar year and in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in each

calendar year and in twelve calendar months preceding his termination No evidence has been led by the petitioner to contradict the muster roll Ex. RW-1/A tendered in evidence by the respondents.

Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

12. The learned counsel for the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondents. No credence can be attached to the list of juniors Mark PY as the same has not been proved in accordance with law. No cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondents have retained the persons junior to him and engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

13. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner during December, 1995 by the respondents is not illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the respondents and against the petitioner.

Issue No. 2

14. Since, the petitioner has failed to prove issue No. 1 above, this issue becomes redundant.

Issue No. 3

15. In support of this issue, no evidence has been led by the respondents. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4

16. During the course of arguments, this issue was not pressed by the learned vice counsel for the respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my above discussion and findings on issues No. 1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 26th day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref No. 86 of 2016

Instituted on 14.9.2016

Decided on 26.3.2018

Salig Ram s/o Shri Sewa Nand, r/o Village & P.O. Chaba, Tehsil Sunni, District Shimla, H.P. ... *Petitioner.*

VS.

The Resident Engineer, H.P.S.E.B., Davison Jeori, Ganvi Power House, District Shimla, H.P. ...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Naresh Sharma, Advocate

For respondent : Ms. Kiran Mehta, Advocate *vice* Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Salig Ram s/o Shri Sewa Nand r/o Village & Post Office Chaba, Tehsil Sunni, Distt. Shimla, H.P. during March, 1995 by the Resident Engineer, Ganvi Power House Division, H.P.S.E.B. Jeori, Distt. Shimla, H.P., who had worked for 127 days only during the years 1994-95 and has raised his industrial dispute after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 127 days only and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially he was appointed as Class-IV employee on daily wages basis with the respondent and thereafter his services were orally terminated without any reason and without serving any prior notice as required under law and also without complying with the provisions of Industrial Disputes Act, 1947 (hereinafter

referred as to Act). It is further stated that after the appointment of petitioner, he worked at various places under respondent and his services were terminated without serving any prior notice under section 25-F of the Act and without paying any compensation. It is also stated that many persons namely Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umed Ram, Kanshi Ram, Om Prakash, Jiva Nand and Ranveer Singh who were juniors to the petitioner were retained violating the provisions of sections 25-G and 25-H of the Act and their services had been regularized and the services of the petitioner have been terminated despite the fact that he had completed 240 days in twelve calendar months and even preceding to the date of his oral termination. It is stated that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but of no avail. Against this back-drop a prayer has been made that directions be issued to the respondent to re-instate the petitioner in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken qua maintainability, that the petition is hopelessly time barred, and estoppel etc. On merits, it has been asserted that the petitioner was initially engaged on 25.8.1994 and worked as such till 24.3.1995 and his services were never terminated by the respondent who had left the job at his own and never turned up on work after 24.3.1995. It is further asserted that since the petitioner had not completed 240 days in each calendar year, hence, he is not entitled for any prior notice as required under the Act. It is denied that the persons junior to the petitioner were retained and after terminating his services, fresh hands were engaged. It is asserted that the alleged names of juniors referred by the petitioner are senior to him and after his abandonment he had never visited the HPSEBL authorities for his re- engagement. The respondents prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 1.7.2017.

(1) Whether the termination of the services of petitioner during March, 1995 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified as alleged? *OPP*…….

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? *OPP*…….

(3) Whether the petition is not maintainable as alleged? *OPR*…….

(4) Whether the petition is time barred as alleged? *OPR*……

(5) Relief

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3	No.
Issue No. 4	Not pressed.
Relief	Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1:

7. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

8. On the other hand, learned vice counsel for the respondents contended that the services of the petitioner had never been terminated by the respondent who had left the job at his own and even he had not completed 240 days in any calendar year. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

9. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the certified copies of order of the Court Ex. PW-1/B and Ex. PW-1/C and list of juniors mark PX. In cross-examination, he denied that on 25.8.1994, he was engaged for doing specific work. He admitted that he had worked with the respondent till 24.3.1995. He denied that he had worked only for 127 days. He further denied that he had not completed 240 days in any calendar year. He also denied that neither any junior was retained nor any fresh hands have been engaged by the respondent.

10. On the other hand, the respondent has examined one Shri Jagdish Chand, Junior Engineer, HPSEB Power House Chaba as RW-1 who stated that the petitioner was engaged as beldar on 25.8.1994 at Electric Division Kasumpati, Shimla and he worked with intermitted breaks upto 24.3.1995. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/A. He further deposed that the petitioner had worked only for 127 days and no juniors to him have been retained and no fresh hands have been engaged. He also stated that the petitioner had never completed 240 days in any calendar year. In cross-examination, he denied that the petitioner had completed 240 days in a calendar year. He further denied that the services of the petitioner were terminated without notice and compensation. He also denied that Geeta Ram, Om Dutt, Girdhari Lal, Lal Chand, Ravinder Kumar, Kumar Lal, Umeed Ram, Kanshi Ram, Om Prakash, Jeeva Nand and Ranveer Singh were retained in service after the termination of the services of the petitioner and these persons are juniors to the petitioner.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 127 days as daily waged beldar with the respondent during the entire period *w.e.f.* 25.8.1994 to 24.3.1995 as is evident from the mandays chart Ex. RW-1/A. The perusal of mandays chart Ex. RW-1/A, goes to show that the petitioner had worked for 72 days in the year, 1994 and 55 days in the year, 1995. The case of the petitioner is that he had completed 240 days in each calendar year and in twelve calendar months preceding his termination but in support thereof he has failed to place on

record any documentary evidence which could go to show that the petitioner had completed 240 days in each calendar year and in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in each calendar year and in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in each calendar year and in twelve calendar months preceding his termination. No evidence has been led by the petitioner to contradict the muster roll Ex. RW-1/A tendered in evidence by the respondent. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

12. The learned counsel for the petitioner also contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondent as such the respondent had violated the principles of "last come first go". However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondent. No credence can be attached to the list of juniors Mark PX as the same has not been proved in accordance with law. No cogent and satisfactory evidence has been led by the petitioner which could go to show that the respondent had retained the persons junior to him and engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

13. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner during March, 1995 by the respondent is not illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the respondent and against the petitioner.

Issue No. 2:

14. Since, the petitioner has failed to prove issue No. 1 above, this issue becomes redundant.

Issue No. 3:

15. In support of this issue, no evidence has been led by the respondent. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

16. During the course of arguments, this issue was not pressed by the learned vice counsel for the respondent, hence, the same is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issues No. 1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 26th day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref No. 29 of 2016

Instituted on 1.4.2016

Decided on 6.3.2018

Mohan Lal s/o Shri Sewa Dass, Resident of Village Kalayanpur, Post Office Gumma, Tehsil and District Shimla, H.P. .. *Petitioner.*

VS.

1. State of H.P. through Secretary (H.P.PWD.) to the Government of Himachal Pradesh, Shimla-2

2. Executive Engineer H.P.P.W.D. Division No. 1, H.P.

..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Vishal Sharma, Advocate

For respondents : Shri H.N Kashyap, ADA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Mohan Lal s/o Shri Sewa Dass, r/o Village Kalyanpur, P.O. Gumma (Mashobra), Tehsil & Distt. Shimla, H.P. during December, 1998 by the Executive Engineer, HPPWD Division No. 1, Shimla-3, who had worked as beldar on daily wages only for 156 days and 263 days in 1997 & 1998 respectively and has raised his industrial dispute after about 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 156 days and 263 days in 1997 & 1998 respectively and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* April, 1997 to November, 1997, he was appointed as daily rated beldar and thereafter he had been given artificial break and then *w.e.f.* Jan., 1998 to September, 1998, he was engaged under Kasumpati Sub Division Dhalli, Shimla. It is further stated that the petitioner continued to work as daily waged beldar but the respondents have not intentionally maintained the record/muster roll. The petitioner has completed more than 240 days in preceding twelve months prior to his termination and in the month of September, 1999, his services were terminated orally which is against the statutory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is also stated that the petitioner is an unemployed and the work against which the petitioner was engaged is of permanent in nature. Against this back-drop a prayer has been made that the retrenchment of petitioner *w.e.f.* September, 1998 be declared illegal and the respondents be directed to reengage the petitioner at the same place and in the same capacity with all consequential service benefits including back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken that the petition deserves dismissal due to delay and laches and maintainability. On merits, it has been asserted that the petitioner was engaged in the department during the month of April, 1997 under Kasumpati Sub Division, HPPWD Dhalli and he worked for 194 days in the year, 1997 and during the year, 1998, the petitioner had worked only for 64 days and thereafter he had left the job at his own will without any intimation at the site of work and his services were never terminated by the respondents and since, he had left the job at his own, hence, no notice under section 25-F of the Act was issued to him. The respondents prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 28.7.2017.

(1) Whether the termination of the services of the petitioner during December, 1998 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? *OPP……..*

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? *OPP……..*

(3) Whether the petition is hit by delay and laches as alleged? *OPR……..*

(4) Whether the petition is not maintainable as alleged? *OPR……..*

(5) Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1 No

Issue No. 2 Becomes redundant

Issue No. 3 Yes

Issue No. 4 No

Relief Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1 & 3:

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned counsel for the respondents contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

10. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence the copy of mandays chart mark PX. In cross-examination, he denied that he had not approached the department after the year, 1997. He admitted that he had worked for 194 days in the year, 1996 and 40 days in the year, 1997. He

further admitted that he had raised the demand notice after 15 years. He also admitted that he had worked under Kasumpati Sub Division which stood closed in the year, 1998 and thereafter none has worked with the aforesaid Sub Division. He admitted that no termination letter was issued to him. He further admitted that after the year, 1998 no junior had been retained in Sub Division Kasumpati. He also admitted that he had not completed 240 days in any calendar year.

11. On the other hand, the respondents have examined Shri Kamal Kishore, Junior Engineer, as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the authority letter Ex. RW-1/B. In cross-examination, he denied that during the year, 1997-98 the minimum number of working days for regularization were fixed at 90 working days. He further denied that the services of the petitioner were orally terminated but volunteered that the petitioner had left the job at his own.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as daily waged beldar with the respondents *w.e.f.* 4/1997 till 9/1998 which fact is also clear from the copy of mandays chart mark PX tendered by petitioner himself in his statement as PW-1. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

13. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 15 years. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 15 years. Therefore, the position of law in respect of a stale claim is required to be seen.

14. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:**

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

15. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in**

approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

16. ***In Haryana State Coop. Land Development Bank*** *Vs.* ***Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service w.e.f. 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:***

> 13."In Ajaib Singh (supra), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14."The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. In Balbir Singh vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (supra), this Court observed :

> 5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh v. Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. ((1999) 6 SCC 82: 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38)."
>
> 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16."Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

> "6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we

think the two decisions relied upon by the learned counsel have no application to the case on hand."

17."In Nedungadi Bank Ltd. (supra), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (supra), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

17. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** Vs. **Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

18. **In Assistant Engineer, CAD Kota** Vs. **Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

19. In **UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

> " 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

20. **In (2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

> "9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

21. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi** *Versus* **State of HP and others decided on 26.10.2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* 9/1998 and he raised the present dispute after a period of more than 15 years. In raising the dispute after a period of more than 15 years, no explanation has been furnished by the petitioner for not raising the demand notice within a reasonable period. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 15 years caused in seeking reference but the petitioner has failed to discharge his burden. Rather, the petitioner himself admitted in cross-examination that he had not approached the department after the year, 1997. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. Moreover, the petitioner as PW-1 admitted in cross-examination that he had not completed 240 days in any calendar year. The petitioner himself has tendered in evidence the copy mandays chart mark PX, the perusal of which shows that the petitioner has worked only for 194 days in the year, 1997 and 40 days in the year, 1998. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

25. The learned counsel for the petitioner next contended that the respondents have taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon 'ble Supreme**

Court in 2009 (13) SCC 746 that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 15 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 15 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 15 years as the delay in the present case is certainly fatal.

26. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondents have violated the principles of "last come first go". However, the petitioner himself admitted in cross-examination that the Kasumpati Sub Division was closed in the year 1998 and after the year, 1998, no junior had been retained in Sub Division Kasumpati. Moreover, as observed earlier, the petitioner had raised the demand notice after a period of 15 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon 'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 15 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 15 years.

27. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 15 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2

28. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 4

29. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in

favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 6th Day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF Sh. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA.**

Ref No. 45 of 2017
Instituted on 7.3.2017
Decided on 29.3.2018

Karam Dass s/o Shri Surmu Ram, Resident of Village Tanseri, P.O. Nogli, Tehsil Rampur, District Shimla, H.P. ...*Petitioner.*

VS.

1. Senior Engineer, H.P.S.E.B. Ltd. Electrical Division Rampur Bushehr, Distt. Shimla. 2.

2. Assistant Engineer, H.P.S.E.B. Ltd. Division Rampur, Sub-Division Nogli Power House, Rampur Bushehr, Distt. Shimla, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Naresh Sharma, Advocate

For respondent : Ms. Kiran Mehta, Advocate vice Shri Ramakant Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Karam Dass s/o Shri Summu Ram, r/o Village Tanseri , P.O. Nogli, Tehsil Rampur, Distt. Shimla, H.P. during October, 1997 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Ltd. Rampur Bushehr, Distt. Shimla, H.P., who had worked for 47 & 43 days during 1994 & 1997 respectively and raised his industrial dispute after about 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 47 & 43 days during 1994 & 1997 respectively and delay of about 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that in the year, 1987, he was appointed as daily rated class-IV employee by the respondent and worked till 1997 regularly and he had completed

240 days during the course of his job but his services were illegally terminated by the respondent without any reason and rhyme. It is further stated that many juniors were engaged after the termination of the services of the petitioner and many fresh persons have been engaged but the petitioner was not called upon to be re-engaged. It is also stated that the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) have been grossly violated. Against this back-drop a prayer has been made that the petitioner be ordered to be re-engaged in service with seniority and continuity alongwith back-wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken *qua* estoppel, maintainability, that the petition is patently time barred etc. On merits, it has been asserted that the petitioner was engaged as casual labourer on muster roll basis on 25.2.1994 against specific work and worked till 24.10.1997 and thereafter *w.e.f.* 25.10.1997, the petitioner had left the job at his own. It is further asserted that the petitioner had not completed 240 days in any calendar year and since, the petitioner had left the job at his own, hence the provisions of sections 25-F, 25-G and 25-H of the Act are not applicable in the present case. It is also asserted that no junior to the petitioner and no fresh persons had been engaged by the respondents except those who were reinstated by the orders of the Court. The respondents prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 23.10.2017.

(1) Whether the termination of the services of the petitioner by the respondents during October, 1997 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? ...*OPP*

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...*OPP*

(3) Whether the petition is time barred as alleged? .....*OPR*

(4) Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1 No

Issue No. 2 Becomes redundant

Issue No. 4 Yes

Relief Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1 & 4

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned *vice* counsel for the respondents contended that the claim of the petitioner is highly belated and stale. She further contended that the services of the petitioner were never terminated by the respondents rather he had abandoned the job at his own without intimation to the respondents and even he had not completed 240 days in any calendar year. She also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

10. Before, I proceed further it is important to mention here that despite availing several opportunities, the petitioner has failed to lead any evidence in support of his case, therefore, *vide* order dated 20.1.2018, the evidence of the petitioner was closed by the order of this Court.

11. On the other hand, the respondents have examined Shri Maheshwar Singh, Senior Assistant as RW-1 and tendered in evidence authority letter Ex. RW-1/A. He deposed that the petitioner was engaged by the board on 25.2.1994 and he worked only for 90 days till 25.10.1997. He further stated that the petitioner had never completed 240 days in any calendar year and he had abandoned the job at his own. He also stated that no fresh hands were engaged by the board after the disengagement of the petitioner and the junior persons to him were engaged by the board on the orders of the Court. In cross-examination, he admitted that no notice was issued and no compensation was paid to the petitioner prior to his termination. He denied that the board had engaged fresh hands and retained the juniors namely Ramesh Chand, Jia Lal and Ram Krishan after the termination of the services of the petitioner. He admitted that no notice was ever issued to the petitioner calling upon him to join the duties. He denied that the petitioner had completed 240 days in each calendar year.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as daily wage beldar by the respondents on 25.2.1994 and he worked as such till 25.10.1997 only for 90 days. The case of the petitioner is that he had completed 240 days in each calendar year but in support thereof he has failed to lead any evidence which could go to show that he had completed 240 days in each calendar year.

13. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

14. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 14 years. According to the petitioner he was terminated in the year, 1997. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 14 years. Therefore, the position of law in respect of a stale claim is required to be seen.

15. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal,** it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under

the ID Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

16. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

In Haryana State Coop. Land Development Bank Vs. ***Neelam reported in (2005) 5 SCC 91,*** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood

answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. **"The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom** Bharat Forge Co. Ltd. *Vs.* Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. " In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (supra), a Bench of this Court, where S. Saghir Ahmad was a member. [His Lordship was also a member in Ajaib Singh (*supra*)], opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

17. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation** *Vs.* **Babu Ram,** the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a

reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

18. **In Assistant Engineer, CAD Kota** *Vs.* **Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

19. In **UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

20. **In (2009) 13 SCC 746, State of Karnataka** *Vs.* **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

21. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26.10.2016**, it has been held as under:

> "9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated *w.e.f.* the year, 1997 and he raised the present dispute after a period of more than 14 years. The petitioner has failed to lead any evidence to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 14 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, from the perusal of evidence led by the respondents, it is established on record that the petitioner had worked only for 90 days *w.e.f.* 25.2.1994 to 24.10.1997. He had not completed 240 days in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** Vs. ***Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** V/s ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> **"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."**

A bare perusal of the extract of the judgment re-produced, here-in-above, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the present case, the petitioner has failed to lead any evidence in support of his case and also failed to examine himself before this Court, hence, it cannot be said that the petitioner had completed 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

26. The learned counsel for the petitioner next contended that the respondents had taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 14 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 14 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 14 years as the delay in the present case is certainly fatal.

27. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". However, no evidence has been led by the petitioner in this respect. Moreover, as observed earlier, since, the petitioner had raised the demand notice after a period of 14 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon 'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 14 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 14 years.

28. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 14 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2

29. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 29th Day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H. P. Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref . No. 78 of 2016
Instituted on 3.9.2016
Decided on 12.3.2018

Shri Ram Bahadur s/o Late Shri Gopal Singh, r/o Kala Bhawan, Lower Khalini, Shimla-9, H.P. ...*Petitioner.*

Vs.

Divisional Forest Officer Wildlife Division, Shimla, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate

For respondent : Shri Mahender Singh, ADA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether alleged termination of services of Shri Ram Bhadur s/o Shri Gopal Singh, r/o Kala Bhawan, Lower Khalini, Shimla-9, H.P. during February, 2000 by the Divisional Forest Officer, Wild Life Division, Shimla, Distt. Shimla, H.P., who had worked as beldar on daily wages only for 31, 29, 62, 181 and 53 days during the years 1996, 1997, 1998, 1999 & 2000 respectively and has raised his industrial dispute after about 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period for 31, 29, 62, 181 and 53 days during the years 1996, 1997, 1998, 1999 & 2000 respectively and delay of about 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Briefly, the case of the petitioner is that in Jan., 1994 he was engaged as daily wage worker by the respondent and his services were retrenched *w.e.f.* Feb., 2000 without assigning any lawful reason. That neither any retrenchment notice was served upon the petitioner nor any enquiry has been conducted against him. It is further stated that the juniors to the petitioner have been retained and regularized by the respondent by ignoring the seniority of the petitioner and even the petitioner had requested for his reinstatement but of no avail. It has also been stated that the termination of the services of the petitioner is contrary to the provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against this back-drop a prayer has been made that directions be issued to the respondent to re-instate the petitioner in service alongwith all consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the work on which the petitioner was engaged was being carried out exclusively under Foreign Aided Project called Eco-Development NORAD Project and the respondent was only executing agency and the aforesaid project came to a closure due to non-availability of funds and all daily waged labourers including the petitioner were automatically disengaged and as such no vested right was created to the petitioner as he was engaged purely on seasonal and temporary work, hence, the claim of the petitioner is not maintainable. That the petition is not maintainable due to delay and latches. On merits, it has been asserted that the petitioner was engaged on daily wage basis as per the need of work *w.e.f.* 1.12.1996 as casual labourer and he had not completed 240 days in any preceding calendar year and that the present claim has been filed by him after a gap of about 14 years. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 2.5.2017.

(1) Whether the termination of the services of the petitioner during Feb., 2000 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? .....*OPP.*

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? .....*OPP.*

(3) Whether the claim petition is not maintainable due to delay and latches? .....*OPR.*

(4) Relief

5. I have heard the learned counsel for the petitioner and learned ADA for the respondent and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No

Issue No. 2 Becomes redundant

Issue No. 3 Yes

Relief : Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1 & 3

7. Being interlinked and correlated, both these issues are taken up together for decision.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without complying with the provisions of Act. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, learned ADA for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner were engaged under Foreign Aided Project called Eco-Development NORAD Project and the respondent was only executing agency and the aforesaid project came to a closure due to non-availability of funds and all daily waged labourers including the petitioner were automatically disengaged, hence, he is not entitled to any relief.

10. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as daily wager in Jan., 1994 in the forest department under DFO Wild Life Shimla and he worked till Jan., 2000. He further stated that his services were terminated by the respondent without issuing any notice and without conducting any enquiry. He also stated that his juniors namely Jeet Bahadur, Geeta Ram, Tota Ram and Ginder etc., were retained by the respondent and have been regularized. He also tendered in evidence the copy of demand notice Ex. PW-1/A. He further stated that he had completed 240 days in every calendar year. In cross-examination, he admitted that he was engaged in Foreign Aided ECO (NORAD) Project. He further admitted that the project came to an end due to non-availability of funds. He denied that he had not completed 240 days in any calendar year. He further denied that no juniors were retained and regularized by the respondent. He also denied that he was engaged for seasonal work in the Project.

11. On the other hand, the respondent examined Shri Ram Lal Jhingta, Range Officer as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B and copy of authority letter Ex. RW-1/C. In cross-examination, he denied that many persons have been regularized who were engaged in ECO Project. He further denied that the petitioner had completed 240 days in each calendar year.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 31 days in the year, 1996, 29 days in the year, 1997, 62 days in the year, 1998, 181 days in the year, 1999 and 53 days in the year, 2000 as is evident from the mandays chart Ex. RW-1/B. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

13. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 14 years which fact is also clear from the reference itself that the petitioner had raised the

industrial dispute after more than 14 years. Therefore, the position of law in respect of a stale claim is required to be seen.

14. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota** Vs. **Mohan Lal,** it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the ID Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

> "19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

13. **In Assistant Executive Engineer, Karnataka** Vs. **Shivalinga reported in (2002) 10 SCC 167,** the services of the employee were terminated on 25.5.1985 and he approached the Labour Officer on 17.3.1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

> "Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

16. **In Haryana State Coop. Land Development Bank** Vs. **Neelam reported in (2005) 5 SCC 91,** the employee was discontinued from service *w.e.f.* 30.5.1986 and he raised the demand notice on 30.9.1993 and thereafter the reference was sent to the Labour court by the

appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

> 13"In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."
>
> 14**. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom** Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar *vs.* Rajesh Ranjan @ Pappu Yadav & Anr. para 42."
>
> 15. " In Balbir Singh *vs.* Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :
>
> > 5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. ((1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).
> >
> > 6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka *vs.* Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

> "6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh *Vs.* Sirhind Coop. Marketing-*cum*-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit *Vs.* U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member. His Lordship was also a member in Ajaib Singh (*supra*), opined :

> "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. **As to when a dispute can be said to be stale would depend on the facts and circumstances of each case.** When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."
>
> (*Emphasis supplied*).

17. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram, the termination was dated 19.9.1983 and the reference was made on 29.8.1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

18. **In Assistant Engineer, CAD Kota** Vs. **Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons……..

19. In **UP State Road Transport Corporation** Vs. **Ram Singh and another (2008) 17 SCC 627,** the termination was dated 15.3.1973 and the reference was dated 15.6.1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

" 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent. "

20. **In (2009) 13 SCC 746, State of Karnataka** Vs. **Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work……

21. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi** *Versus* **State of HP and others decided on 26.10.2016**, it has been held as under:

"9. **It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".**

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during Feb., 2000 and he raised the present dispute after a period of more than 14 years. In his claim petition, the petitioner has stated that after his termination he requested for his reinstatement orally as well as in writing but he was not reinstated. However, except for his bald statement there is no other evidence on record to suggest as to when he had requested for his reinstatement after the retrenchment of his services. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 14 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 14 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, from the perusal of mandays chart Ex. RW-1/B, it is clear that the petitioner has not completed 240 days in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** *Vs.* ***Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchayat*** *V/s* ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in each calendar year and in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in each calendar year and in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

26. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of "last come first go". However, except for the bald statement of the petitioner that after termination of his services, the persons namely Jeet Bahadur, Geeta Ram, Tota Ram abd Ginder etc., were retained by the respondent who were his juniors, no other evidence has been led by the petitioner to this effect. No documentary evidence has been placed on record by the petitioner that after his termination, his juniors were retained. Moreover, as observed earlier, the petitioner had raised the demand notice after a period of 14 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13.6.2012, titled as Suraj Mani** Vs. **HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 14 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 14 years.

27. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 14 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2

28. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 12th Day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref . No. 107 of 2017

Instituted on 3.7.2017

Decided on 16.3.2018

Yog Raj son of Shri Paras Ram, Resident of Village Panehra, Post Office Chaba, Tehsil Sunni, District Shimla, H.P. ..*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division Shimla, Mist Chamber Shimla, District Shimla, H.P.

2. The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, H.P.

..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ajay Kumar, Advocate

For respondents : Shri Mahender Singh, ADA

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether termination of services of Shri Yog Raj s/o Shri Paras Ram, Village Panehra, P.O. Chaba, Tehsil Sunni, Distt. Shimla, H.P. *w.e.f.* 1.3.2016 by the Divisional Forest Officer, Forest Division Shimla, Distt. Shimla, H.P., allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, past

service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1.1.2004, he was engaged as daily rated beldar by the respondents and since the date of his engagement, the petitioner had discharged his duties as assigned to him with full sincerity, honesty and to the entire satisfaction of his superiors and there had been no complaint what-so-ever with regard to his work and conduct. It is further averred that the petitioner had worked with the respondents till 29.2.2016 and thereafter his services were orally terminated by the respondents without giving any notice and that too without assigning any reasons and even the respondents were giving fictional breaks willfully to the petitioner in order to deprive him the status of permanent workman. It is also stated that the petitioner had worked continuously without any break and had completed more than 240 days in each calendar year and also preceding to the date of his illegal termination. That before dispensing with the services of the petitioner neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given nor he was paid any retrenchment compensation, hence, his termination is against the provisions of section 25-F of the Act. That the regular work is available in Sunni Range and before terminating the services of the petitioner no opportunity of being heard was afforded to him and even juniors to him S/Shri Nek Chand, Om Prakash, Tej Ram, Thakur Singh, Hem Chand etc., are still working with the respondent which is totally against the provisions of sections 25-G and 25-H of the Act. Against this back-drop a prayer has been made that he be reinstated in service with seniority, back wages and regularization. It has further been prayed that the petitioner be granted permanent status by counting daily wage service as per the Policy of the State Government.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been that *qua* maintainability and delay and latches. On merits, it has been asserted that petitioner was initially engaged during the year, 2004 to carry out the seasonal forestry works in Bhajji (Sunni) Range of Shimla Forest Division and he had completed 240 days in the years 2006 and 2007 and thereafter he had left the work and since the petitioner had not completed 240 days in any calendar year except the years 2006 and 2007, hence, as per the policy of the State Government he is not entitled for regularization. It is denied that the services of the petitioner were orally terminated by the respondents. It is asserted that the petitioner is still working in the department on bill basis as per availability of funds. That *w.e.f.* 2005 to 2011, the petitioner had worked on muster roll basis and thereafter he was engaged on bill basis keeping in view the instructions of the Government regarding execution of works on sanctioned schedule of rates. That the respondent No. 2 had also issued a letter dated 2.5.2017 to the petitioner requesting therein to attend the work but he did not bother and attended the work at his own sweet will and since the services of the petitioner were never terminated by the respondents, hence, the issuance of notice under section 25-F of the Act does not arise at all. It is denied that the juniors to the petitioner are still working with the respondents. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder the petitioner reiterated his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 1.11.2017.

(1) Whether the termination of the services of the petitioner by the respondents *w.e.f.* 1.3.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? .....*OPP.*

(2) If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...*OPP.*

(3) Whether the petition is not maintainable as alleged? ...*OPR.*

(4) Relief

6. I have heard the learned counsel for the petitioner and learned ADA for respondents and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No

Issue No. 2 Becomes redundant

Issue No. 3 No

Relief Reference answered in favour of the respondents and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1

8. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of seniority list mark X, mandays chart mark Y and the copy of information obtained from the respondents under RTI Act mark Z. In cross-examination, he admitted that the department used to call him on the availability of work. He further admitted that after the year, 2016, he had also worked with the respondents. He also admitted that he was engaged by the department on bill basis. He denied that he had completed 240 days only in the years, 2006 and 2007. He further denied that in the Bhaji Range no continuous work is available after the completion of Kol Dam Project. He admitted that Nek Chand and Om Prakash were engaged upon the orders of the Court. He denied that he used to leave the work at his own. He further denied that there is seasonal work in Bhajji Range. He also denied that he is not entitled for regularization. He denied that he had received the entire payment of his due wages.

9. Shri Devi Singh, Deputy Ranger appeared into the witness box as PW-2 to depose that the name of the petitioner is reflected in the seniority list *w.e.f.* year 2004 till the year, 2011 and thereafter his name is not reflected in the seniority list as he was working on bill basis.

10. On the other hand, the respondents have examined Shri Ramesh Chand, Range Officer Bhajji Range as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of mandays chart Ex. RW-1/B and copy of notice Ex. RW-1/C. In cross-examination, he admitted that the petitioner was engaged on 1.1.2004 as daily wager and he worked till 29.2.2016. He denied that the petitioner had completed 240 days in each calendar year. He further denied that the services of the petitioner were terminated on 29.2.2016. He admitted that neither any notice was issued nor any compensation was given to the petitioner prior to his termination. He

denied that artificial breaks were given to the petitioner. He further denied that many junior persons to the petitioner were retained. He admitted that Sita Devi was regularized in the year, 2017. He further admitted that now days the petitioner is not working with the department.

11. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondents as daily wage beldar *w.e.f.* 11.6.2004 till the year 2011 as is evident from the mandays chart Ex. RW-1/B. The perusal of mandays chart Ex. RW-1/B, goes to show that the petitioner had worked for 51 days in the year, 2004, 175 days in the year, 2005, 266 days in the year 2006, 247 days in the year 2007, 232 days in the year, 2008, 193 days in the year, 2009, 219 days in the year, 2010 and 105 days in the year, 2011. The case of the petitioner is that he had completed 240 days in each calendar year and in twelve calendar months preceding his termination but in support thereof he has failed to place on record any documentary evidence which could go to show that the petitioner had completed 240 days in preceding twelve months prior to his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika*** Vs. ***Babuji Gabhaji Thakore and others***, the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***
>
> In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat*** V/s ***Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:—
>
> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***
>
> A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. No evidence has been led by the petitioner to contradict the muster roll Ex. RW-1/B tendered in evidence by the respondents. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

12. The learned counsel for the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondents. No documentary evidence has been placed on record by the petitioner which could go to show that the respondents have

retained the persons junior to him. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

13. Thus, in view of the law laid down (*supra*) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 1.3.2016 by the respondents is not illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the respondents and against the petitioner.

Issue No. 2

14. Since, the petitioner has failed to prove issue No. 1 above, this issue becomes redundant.

Issue No. 3

15. In support of this issue, no evidence has been led by the respondents. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 16th day of March, 2018

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA.**

Ref. No. 120 of 2010

Instituted on 27.10.2010

Decided on 16.3.2018

Shri Harvinder Singh s/o Late Shri Dile Ram r/o Village Thadu, P.O. Kango-ka- Gahara, Tehsil Sarkaghat, Distt. Mandi, H.P. ...*Petitioner.*

Vs.

Pradhan Vishal Himachal Taxi Operators Union, Near Lift, Shimla, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Kuldeep Guleria, Advocate

For respondents : Ms. Veena Sood, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

"Whether verbal termination of the services of Shri Harvinder Singh, Clerk s/o Late Shri Dile Ram, by Pardhan, Vishal Himachal Taxi Operators Union, Near Lift, Shimla *w.e.f.* 13.4.2009 without serving charge sheet, without holding enquiry and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?"

2. The petitioner has filed his claim in the shape of application wherein it has been mentioned that the Labour Commissioner, H.P. has forwarded his representation regarding termination of his services by respondent *w.e.f.* 13.4.2009 without serving chargesheet, without holding enquiry and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) and prayed that the respondent be directed to revoke the termination of his services and pay his all dues with 18% interest.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the reference is neither competent nor maintainable and the petitioner is estopped from filing the present claim by his own acts, omissions and conduct and maintaining the present claim. On merits, it has been asserted that the petitioner had abandoned his job and during conciliation proceedings he was asked to join his services but he totally refused to do so. It is further asserted that the conduct/behavior of the petitioner was not good and he used to misbehave with the members of the union and had even tendered apology for his misconduct. That he had filed an application for getting his vehicle registered with the Union and he was informed that no employee of the union can be an operator in that union as it would entail conflict of interests and affect the fair working of the union. It is also asserted that the petitioner besides getting fixed salary was also getting ₹ 10 and ₹ 20 as commission per vehicle as and when the same was booked from the union by the client/passenger and the demand with respect to the alleged arrears is neither competent nor maintainable. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder the petitioner reiterated his allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 28.9.2012.

(1) Whether the services of the petitioner were terminated without serving chargesheet and without holding enquiry? .....*OPP.*

(2) Whether the services of the petitioner were terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947? ....*OPP.*

(3) If issue No. 1 & 2 are answered in affirmative, to what service benefits the petitioner is entitled to? .....*OPP.*

(4) Whether this petition is not maintainable? ....*OPR.*

(5) Whether the petitioner is estopped from filing the present petition by his act and conduct? .....*OPR.*

(6) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 Yes

Issue No. 2 Yes

Issue No. 3 Entitled to reinstatement in service with seniority and continuity but without back-wages

Issue No. 4 No

Issue No. 5. No

Relief Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues No. 1 & 2

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 to depose that *w.e.f.* 15.8.1993 till 13.4.2009, he had worked as booking clerk with the respondent and initially he was getting ₹ 800/- per month as salary and in the year, 2009, his salary was ₹ 2300/- and his services were terminated without any reason. He further stated that he had written a letter Ex. PW-1/A to the Labour Inspector but despite that he was not paid the back wages and other benefits. In cross-examination, he admitted that he was terminated by Mr. Madan Bansal. He denied that during the course of employment his behavior was not good. He admitted that he had given the apology letters Ex. R-1 and Ex. R-2. He denied that he himself had abandoned his job. He further denied that besides getting salary, he was getting commission on booking. He also denied that to ply his vehicle he used to muddle with the vehicles of union.

10. Shri Jeet Ram, appeared into the witness box as PW-2 to depose that he had remained the President of the respondent union for 3-4 terms. He further deposed that whenever the services of the employee has to be terminated then first of all they ask for his explanation and conduct an enquiry and also issues one month's notice. He also deposed that if in the enquiry the misconduct is not proved, an employee cannot be terminated. He deposed that

there was no provision in their union that an employee of union cannot ply his own vehicle. He further deposed that the vehicle of Suryaprakash is being plied with their union. In cross-examination, he expressed his ignorance as to whether the petitioner was the employee of the respondent till the year, 2009. He denied that the behavior of the petitioner was not proper.

11. PW-3 Shri Anil Kumar, booking clerk of respondent union has produced on record resolution dated 11.10.2007 Ex. PW-3. In cross-examination he admitted that the booking clerk or employee of the union cannot register his vehicle with the union.

12. On the other hand, the respondent has examined Shri Ramesh Verma, Booking Clerk of respondent union as RW-1 who deposed that he is employed as a booking clerk in the respondent union and the petitioner was also working as a booking clerk with the respondent. He further deposed that he had submitted an application, the copy of which is Ex. RW-1/A to the respondent at the time of joining that he would perform his duties sincerely. He also deposed that the petitioner had also submitted the similar application, the copy of which is Ex. RW-1/B. He deposed that when the petitioner was working with the union he used to ply his own vehicle whereas the employee of the union cannot ply his own vehicle. He further deposed that after joining the services, the behavior of the petitioner was changed. He also deposed that the petitioner had also submitted an application for getting his vehicle registered with the union. He also stated that the petitioner had left the job at his own and he had failed to re-join the duties despite the fact that the respondent union had asked him repeatedly to join as the petitioner was plying his own vehicle. In cross-examination, he admitted that the services of the petitioner were terminated without issuance of any notice. He also admitted that the applications Ex. RW-1A and Ex. RW-1/B were obtained by the union after 15 years. He also admitted that Surya Prakash who was a booking clerk was also having a Taxi bearing registration No. HP 01-1333 which was registered with the union. He admitted that at the time of termination of the services of the petitioner, his salary was ₹ 2200/- per month.

13. RW-2 Shri Anil Karol, President of the respondent union has deposed that the petitioner was the employee of the respondent union and his duty was to book the vehicles of the union for tourists. He further stated that the work and conduct of the petitioner was not satisfactory and he misbehaved with the office bearers of the union. He also stated that the petitioner had also apologized in writing regarding his misbehavior with the official vide Ex. RW-1/B. The petitioner had left the job at his own and his services were never terminated by the respondent union. In cross-examination, he admitted that no notice regarding the misbehavior of the petitioner had been issued to him by the respondent union. He admitted that before terminating the services of the petitioner one month's prior notice is required to be issued to him. He admitted that they used to pay wages/salary to a workman as per the notification of the state government. He further admitted that the petitioner was working as booking clerk since 1.9.1993. He expressed his ignorance whether the petitioner was getting the salary of ₹ 1600/- till his termination. He further expressed his ignorance whether the petitioner had not been paid the salary/wages for 5-6 years by the respondent union.

14. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof it has become clear that the petitioner had worked with the respondent as booking clerk *w.e.f.* 15th August, 1993 till the year, 2009. The case of the petitioner is that his services were terminated without complying with the provisions of the Act and neither any chargesheet was issued to him nor any enquiry was conducted against him whereas the case of the respondent is that the petitioner had abandoned the job at his own and stopped attending his duties. However, there is no *iota* of evidence on record to show that the petitioner had left the job at his own as no notice or letter regarding the abandonment of job by the petitioner is placed on record by the respondent. Similarly, no evidence on record has been led by the respondent to

show that any notice was issued to the petitioner for resumption of his duties. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others** Vs. **Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582,** the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under**:**

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.**
>
> **In Buckingham Co.** v. **Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**
>
> It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools** Vs. **Ram Surat reported in 2004 (103) FLR 102**. Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee alongwith his intention not to join back. However, in the present case, there is no *iota* of evidence on record which could go to show that the petitioner had left the job along with his intention not to join back. Therefore, in the absence of any cogent and satisfactory evidence on record, inference cannot be drawn that the petitioner had voluntarily abandoned the job.

15. It is not in dispute that the petitioner had worked with the respondent continuously *w.e.f.* the year, 1993 till the year, 2009 and had completed 240 days in each calendar year and in the preceding twelve months prior to his termination. It is also not in dispute that neither any notice had been issued to the petitioner nor he was paid any compensation. RW- 2, the President of the respondent union admitted in cross-examination that before terminating the services of a workman, one month's notice is required to be issued to him. RW-1, Booking clerk of the respondent union also admitted in cross-examination that the services of the petitioner were terminated without issuing any notice by the respondent union. It is not in dispute that neither any chargesheet was issued to the petitioner nor any enquiry was conducted against him. In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's** Vs. **State of HP and ors.** It has been held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

> "8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
>
> 9……..

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11……..

12…….

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

Since, in the instant case, the petitioner had completed 240 working days in each calendar year and in preceding twelve months prior to his termination, hence, before terminating his services, it was incumbent upon the respondent to have conducted the enquiry regarding his alleged misconduct but no notice and chargesheet was issued to the petitioner and no enquiry was held against him. Moreover, the provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** Vs. **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

"34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

16. In the present case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without complying with the provisions of section 25-F of the Act is illegal and unjustified.

17. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without serving chargesheet and without holding any enquiry and that too without complying with the provisions of the Act, is illegal and unjustified. Accordingly, both these issues are answered in favour of the petitioner and against the respondent.

Issue No. 3

18. Since I have held under issues No. 1 & 2 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

19. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** Vs. **Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** Vs. **Prahakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

20. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** Vs**. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

21. In the present case there is no evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 3 is partly decided in favour of the petitioner and against the respondent.

Issue No. 4

22. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5

23. In support of this issue no evidence has been led by the respondent which could go to show that the petitioner is estopped from filing the present petition by his act and conduct.

Therefore, in the absence of any evidence on record, this issue is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issues No. 1 to 5, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 16th Day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- *Labour Court, Shimla.*

IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Ref . No. 136 of 2017

Instituted on 5.9.2017

Decided on 17.3.2018

Asha Devi d/o Shri Bal Bahadur, r/o V.P.O. Gaura, Tehsil Kandaghat, District Solan, H.P.
.....Petitioner.

Vs.

The Registrar LLR Group of Institute, Village Jabli- Kyar, P.O. Oachghat, Tehsil & District Solan, H.P. *....Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner	:	Shri Niranjan Verma, Advocate
For respondents	:	Shri Navesh Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

1. **"Whether termination of services of Ms. Asha Devi d/o Shri Bal Bahadur, V.P.O. Gaura, Tehsil Kandaghat, Distt. Solan, H.P. by the Registrar, LLR Group of**

Institute, Village Jabli-Kyar, P.O. Oachghat, Tehsil & District Solan, H.P. *w.e.f.* 16.11.2016 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. **"Whether action of the management of M/s LLR Group of Institute, Village Jabli- Kyar, P.O. Oachghat, Tehsil & Distt. Solan, H.P. to engage the services of a fresh/junior workman without paying legal dues to the senior workman** *i.e.* **Ms. Asha Devi d/o Shri Bal Bahadur, V.P.O. Gaura, Tehsil Kandaghat, Distt. Solan, H.P., without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief and other service benefits the above aggrieved workman is entitled to from the said employer/institute?"**

2. Briefly, the case of the petitioner is that she was working with the respondent as peon and drawing a monthly salary of Rs. 5510/-. It is further asserted that she was appointed as peon on 25.8.2010 and promoted as Assistant on 15.5.2016 and worked as such till 13.10.2016 and had completed 240 days in each calendar/preceding year. It is also asserted that the petitioner is the member of LLR institute workers union Jabli kyar, P.O. Oachghat, Solan. The workers union submitted memorandum to the respondent management and in the presence of Labour and Conciliation Officer, Solan, a compromise under section 12 (3) of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was arrived at between the parties and thereafter another compromise dated 1.11.2015 was arrived at between the parties but the same was not adhered to by the respondent management upon which a notice dated 1.8.2016 was submitted before the respondent management by the workers union. That the respondent did not allow the petitioner to continue the job and told that she will be appointed fresh and no seniority will be given to her and on 16.11.2016, the office bearers of the workers union were called by the management for negotiation in which the workers union submitted a memorandum that the workers will not join as fresh and they (workers) be considered employees of the respondent from the date of their original joining but the respondent institute refused to take the joining of petitioner and other workers from the date of original joining. That he respondent has resorted to retrenchment of the worker in the guise and pretext which is illegal and the respondent terminated the services of the petitioner arbitrarily and had not afforded the opportunity of being heard as neither any notice was issued to her nor any enquiry was conducted and even the wages for the month of October, 2016, retrenchment compensation, gratuity, bonus and PF were not given to her despite the fact that she had requested the respondent for her reinstatement. Against this back-drop a prayer has been made that she be reinstated in service alongwith all the consequential service benefits including back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been that *qua* maintainability, that the petition is bad for non-joinder of necessary party, that the petitioner has not approached this Court with clean hands and that the petitioner has no cause of action to file and maintain the petition. On merits, it has been asserted that the petitioner had joined the services of respondent as peon *w.e.f.* 1.4.2015 at the gross salary of ₹ 5508/- per month and she was never promoted as Assistant at any point of time. It is denied that any notice dated 1.8.2016 was served upon the respondent management by the workers union. It is further asserted that the petitioner and some other workers of illegally constituted union went on illegal strike *w.e.f.* 13.10.2016 onwards and on account of illegal strike the petitioner did not come back and joined her duties despite the fact that the respondent had issued various letters to her and other workers who went on illegal strike but they have failed to resume their duties, hence, *vide* letter dated 29.11.2016, the petitioner and other members of the

union were asked to receive all their dues but of no avail. It is also asserted that as per the terms of compromise the respondent had re-employed 12 workers and that all the dues of 40 workers had been paid. The petitioner herself had left the services of the respondent by way of going on strike and despite issuance of various letters, she had failed to join her duties. That the petitioner did the work only for 12 days in the month of October 2016 and thereafter she went on illegal strike and did not work, hence, she was entitled for earned gross salary of ₹ 2132/- for 12 days which stands deposited in her bank account on 16.11.2017. Besides this, arrears of ₹ 2952/- also stands deposited in her bank account. It is denied that the retrenchment of the petitioner is neither proper nor justified. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 3.1.2018.

(1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 16.11.2016 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ....*OPP.*

(2) Whether the action of the respondent to engage the services of a fresh/junior workman without paying legal dues to the senior workman *i.e.* petitioner without following the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? ……*OPP.*

(3) If issues No. 1 and 2 are proved in affirmative to what relief of service benefits the petitioner is entitled? ……*OPP.*

(4) Whether the petition is not maintainable as alleged? ……*OPR.*

(5) Whether the petition is bad for non-joinder of necessary party? ……*OPR.*

(6) Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1	Yes
Issue No. 2	Not proved
Issue No. 3	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 4	No
Issue No. 5	No
Relief	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues No. 1 & 2

7. Being interlinked and correlated both these issues are taken up together for discussion and decision.

8. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 to depose that on 25.8.2010, she was appointed as peon by the respondent and she was promoted as Assistant on 15.5.2016 and she worked with the respondent till 13.10.2016. She further stated that she was drawing monthly salary of ₹ 5510/- and she had completed 240 days in every calendar year. She also stated that she had raised demand charter through workers union to the respondent management and two settlements dated 2.3.2015 mark P-1 and dated 26.11.2015 mark P-2 between the workers union and management took place before the Conciliation officer Solan but the respondent had not implemented the aforesaid settlements. She also stated that she had raised a demand notice Ex. PW-1/A which is signed by her and the management had issued her a certificate Ex. PW-1/B and the identity card Ex. PW-1/C. Her services were terminated *vide* letter dated 16.11.2016 mark P-3 and thereafter the management had asked her to join as fresh appointee, however, she refused to join on this condition. She prayed that she be reinstated in service alongwith all consequential benefits. In cross-examination, she admitted that the workers had gone on strike from 13.10.2016 for which a prior intimation was given to the management on 6.10.2016. She admitted that the management had issued a letter dated 13.10.2016 to direct the workers union to resume the work. She further admitted that the petitioner had affixed the notices dated 14.10.2016, 15.10.2016, 17.10.2016, 18.10.2016, 19.10.2016 and 20.10.2016. She denied that the respondent had issued letter dated 26.10.2016 and 29.11.2016 calling upon the workers to take their full & final dues. She admitted that a sum of ₹ 2952/- was deposited in her account by the respondent on 16.11.2017. She denied that the management had suffered losses due to the strike of the workers.

9. On the other hand, the respondent has examined Shri Adil Hussain, Manager (HR) of the respondent as RW-1, who deposed that *vide* authority letter Ex. RW-1/A he has been authorized to depose on behalf of the respondent. He further stated that the petitioner was the employee of the respondent and she joined the service on 1.4.2015 as peon and *vide* letter Ex. RW-1/B, she was promoted as library Attendant on 10.6.2016. He also deposed that on 13.10.2016, the workers union went on strike and thereafter the management had issued letters dated 13.10.2016, 14.10.2016, 15.10.2016, 17.10.2016, 18.10.2016, 19.10.2016 and 20.10.2016 Ex. RW-1/C-1 to Ex. RW-1/C-7 to the workers union to resume their duties but they have refused to accept the same and thereafter on 26.10.2016 and 29.11.2016 again letters Ex. RW-1/D and Ex. RW-1/E were issued to the workers union asking them to receive their full & final dues but the petitioner had never come forward to accept her full & final legal dues and a sum of ₹ 2952/- was deposited in her account as the amount of arrears. He further deposed that the petitioner is only entitled to 12 days salary amounting to ` 2132/- which the respondent is ready to pay. In cross-examination, he denied that the petitioner had joined as a peon on 25.8.2010. He admitted that the settlements Mark P-1 and Mark P-2 were arrived at between the parties with the intervention of Labour-*cum*-Conciliation Officer, Solan. He further admitted that the demand notice Ex. PW-1/A was submitted by the petitioner before the respondent. He also admitted that no letter was issued in the name of petitioner calling upon her to resume the duties. He denied that *vide* letter mark P-3, the management had made an endorsement that they would recruit the petitioner and other workers as fresh appointees. He admitted that no enquiry was conducted against the petitioner. He denied that the petitioner was illegally terminated.

10. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof it has become clear that the petitioner had worked with the respondent initially as Peon and thereafter she was promoted to the post of Library Attendant. The case of the petitioner is that on 25.8.2010 she was appointed as peon and thereafter she was promoted as Assistant on 15.5.2016 but in support thereof no satisfactory evidence has been led by her which could go to show that initially she was appointed as peon on 25.8.2010 and thereafter she was promoted as Assistant on 15.5.2016. The learned counsel for the petitioner placed reliance upon the certificate Ex. Pw-1/B, in order to prove that the petitioner was working with the respondent from 25.8.2010 as a peon. However, no credence can be attached to the certificate Ex. PW-1/B as nothing has been mentioned therein that the petitioner was working as a peon. Moreover, RW- 1 in his deposition before the Court has specifically stated that the certificate Ex. PW-1/B has not been issued by the respondent. In cross-examination he expressed his ignorance that who had signed Ex. PW-1/B. It was incumbent upon the petitioner to have examined the person who had issued the certificate Ex. PW-1/B. However, for the best reasons known to the petitioner she had failed to produce him in the witness box. Therefore, the petitioner cannot derive any benefit from the certificate Ex. PW-1/B. No other evidence like appointment letter etc. has been placed on record by the petitioner that she was engaged by the respondent as peon on 25.8.2010. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was initially engaged as peon on 25.8.2010 and thereafter she was promoted as Assistant on 15.5.2016. On the other hand, RW-1 has deposed before this Court that the petitioner had joined the services of the respondent as peon on 1.4.2015 and thereafter she was promoted as Library attendant on 10.6.2016 *vide* letter Ex. RW-1/B. No evidence to the contrary has been led by the petitioner. Therefore, it stands clear from the record that the petitioner was initially engaged as peon on 1.4.2015 and she was promoted as Library attendant on 1.6.2016. The further case of the petitioner is that her services were terminated without complying with the provisions of the Act and neither any chargesheet was issued to her nor any enquiry was conducted against her whereas the case of the respondent is that the petitioner herself had left the services of the respondent by going on illegal strike and despite various letters she had failed to give reply of the same and also failed to join her duties. In support of this contention, the respondent has placed on record the copies of notices Ex. RW-1/C-1 to Ex. RW-1/C-7, Ex. RW-1/D and Ex. RW-1/E. However, there is no satisfactory evidence on record to show that the petitioner had left the job at her own. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others** Vs. **Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582,** the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under**:**

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.**
>
> **In Buckingham Co.** *v.* **Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools** Vs. **Ram Surat reported in 2004 (103) FLR 102**. Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee alongwith his intention not to join back. However, in the present case, there is no cogent and satisfactory evidence on record which could go to show that the petitioner had left the job along with her intention not to join back. Therefore, in the absence of any cogent and satisfactory evidence on record, inference cannot be drawn that the petitioner had voluntarily abandoned the job.

11. It is not in dispute that the petitioner had worked with the respondent continuously *w.e.f.* 1.4.2015 till 16.11.2016 and had completed 240 days in each calendar year and in the preceding twelve months prior to her termination. It is an admitted fact that neither any notice had been issued to the petitioner nor she was paid any compensation as prescribed under section 25-F of the Act. It is also not in dispute that neither any chargesheet was issued to the petitioner nor any enquiry was conducted against her for the alleged misconduct. In a recent judgment of our **Hon'ble High Court in ILR -XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's** Vs. **State of HP and ors.** it has been held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

"8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9……..

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11……..

12…….

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

Since, in the instant case, the petitioner had completed 240 working days in the calendar year and in preceding twelve months prior to her termination, hence, before terminating her services, it was incumbent upon the respondent to have conducted the enquiry regarding her alleged misconduct but neither any notice and chargesheet was issued to the petitioner nor any enquiry was conducted against her. Therefore, in the absence of any enquiry for the alleged misconduct of the petitioner, her services could not have been terminated.

12. Moreover, the provisions of section 25-F of the Act lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of

a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd.,** *Vs.* **Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

13. In the present case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without complying with the provisions of section 25-F of the Act is illegal and unjustified.

14. The learned counsel for the petitioner also contended that the management of respondent had engaged the services of a fresh/junior workman without paying the legal dues to the senior workman *i.e*. the petitioner in contravention of the provisions of sections 25-G and 25-H of the Act. However, no evidence has been led by the petitioner to prove that the persons junior to her were retained or fresh persons were engaged by the respondent. No documentary evidence has been placed on record by the petitioner which could go to show that the respondent has retained the persons junior to her and engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without serving chargesheet and without holding any enquiry and that too without complying with the provisions of the Act, is illegal and unjustified. Accordingly, both these issues are answered in favour of the petitioner and against the respondent.

Issue No. 3

16. Since I have held under issues No. 1 & 2 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

17. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited** *Vs.* **Shamim Mirza,** the

Hon'ble Supreme Court has held that once the order of termination of services of an employee is set aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals** Vs. **Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

18. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that she was not gainfully employed after the termination of her services. The initial burden is on the workman/employee to show that she was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another** Vs. **S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

19. In the present case there is no evidence on record to suggest that the petitioner was not gainfully employed after her termination. The petitioner has failed to discharge her burden by placing any concrete material on record that she was not gainfully employed after her termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 3 is partly decided in favour of the petitioner and against the respondent.

Issue No. 4

20. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5

21. In support of this issue no evidence has been led by the respondent to show as to how the petition is bad for non-joinder of necessary party. Therefore, in the absence of any evidence on record, this issue is decided in favour of the petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issues No. 1 to 5, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the

respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 17th Day of March, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum- *Labour Court, Shimla.*

LAW DEPARTMENT

NOTICE

Shimla-2, the 14th June, 2018

No. LLR-E(9)-8/2018-Leg.—WHEREAS, Sh. Het Ram, Advocate r/o Village & P.O. Tandi, Tehsil Banjar, District Kullu (H.P.), has applied for appointment of Notary Public in Sub Division Banjar of District Kullu (H.P.) under rule 4 of the Notaries Rules, 1956.

THEREFORE, I undersigned in exercise of the power conferred *vide* Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6(2)(b) of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in the Rajpatra (e-Gazette), H.P. against his appointment as a Notary Public in Sub- Division Banjar of District Kullu (H.P.).

Sd/-
(Competent Authority),
DLR-cum-*Deputy Secretary (Law-English).*

LAW DEPARTMENT

NOTICE

Shimla-2, the 14th June, 2018

No. LLR-E(9)-8/2018-Leg.—WHEREAS, Sh. Amar Chand, Advocate r/o Village Tharman, P.O. Neoli, Tehsil & District Kullu (H.P.), has applied for appointment of Notary Public in Sub-Division Kullu of District Kullu (H.P.) under rule 4 of the Notaries Rules, 1956.

THEREFORE, I undersigned in exercise of the power conferred *vide* Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6(2)(b) of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in the Rajpatra (e-Gazette), H.P. against his appointment as a Notary Public in Sub- Division Kullu of District Kullu (H.P.).

Sd/-
(Competent Authority),
DLR-cum-Deputy Secretary (Law-English).

विधि विभाग

अधिसूचना

शिमला–2, 12 जून, 2018

संख्या एल0एल0आर0–ई(9)–2 / 2018–लेज.––श्री रामलाल गांगटा, अधिवक्ता को सरकार की अधिसूचना संख्या0 एल0एल0आर0–ई(9)–1 / 2010–लेज तारीख 24–07–2010 द्वारा पब्लिक नोटरी नियुक्त किया गया था और जिला शिमला की तहसील जुब्बल की क्षेत्रीय सीमाओं के भीतर इस रूप में व्यवसाय करने के लिए प्राधिकृत किया गया था और उसका नाम नोटरी के रजिस्टर में क्रम संख्या 323 पर प्रविष्ट किया गया था और उसका व्यवसाय प्रमाण'पत्र 04–08–2018 तक विधिमान्य है ।

श्री रामलाल गांगटा, अधिवक्ता शिमला ने पत्र दिनांक 15–03–2018 द्वारा सूचित किया है कि वह बीमारी व वृद्धावस्था के कारण पब्लिक नोटरी के रूप में व्यवसाय को जारी रखने का इच्छुक नहीं है और उसने अपने व्यवसाय प्रमाण–पत्र को रद्द करने का अनुरोध किया है ।

अतः हिमाचल प्रदेश के राज्यपाल, नोटरी नियम, 1956 के नियम 13 (13) के साथ पठित नोटरी अधिनियम, 1952 की धारा 10(क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री रामलाल गांगटा, पब्लिक नोटरी, जिला शिमला की तहसील जुब्बल का नाम पब्लिक नोटेरी के रजिस्टर से तुरन्त प्रभाव से हटाए जाने का एतद्द्वारा आदेश देते हैं ।

आदेश द्वारा,

यशवंत सिंह चोगल,
विधि परामर्शी एवं प्रधान सचिव (विधि)।

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[Authoritative English text of this Department Notification No. LLR-E(9)2/2018-Leg. dated 12 -06-2018 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 12th June, 2018

No. LLR-E(9)- 2/2018-Leg.—WHEREAS Shri Ram Lal Gangta, Advocate was appointed as Public Notary *vide* Government Notification No. LLR-E(9)-1/2010-Leg. dated 24-07-2010 and authorised to practice as such within the territorial limits of Tehsil Jubbal of District Shimla and his name was entered at serial No. 323 in the Register of Notaries and his certificate of practice is valid up-to 04-08-2018;

AND WHEREAS Shri Ram Lal Gangta, Advocate Shimla *vide* letter dated 15-03-2018, has intimated that he is not interested to continue to practice as Public Notary due to ailment and age consideration and has requested to cancel his certificate of practice.

NOW, therefore, the Governor, Himachal Pradesh in exercise of the powers conferred by section 10(a) of the Notaries Act, 1952 read with rule 13(13) of the Notaries Rules, 1956 hereby

order removal of the name of Shri Ram Lal Gangta, Notary Public of Tehsil Jubbal of District Shimla from the Register of Notaries with immediate effect.

By order,

YASHWANT SINGH CHOGAL,
LR-cum- Pr. Secretary (Law).

LAW DEPARTMENT(LEGISLATION)

NOTIFICATION

Shimla-2, the 13th June, 2018

No. LLR-D(6)-12/2018-legn.—The following Ordinances promulgated by the President and Acts enacted by the Parliament and published in the Gazette of India, Extra-Ordinary, Part-II, Section-I are hereby re-published in the H.P. Rajpatra, for the information of general public :—

Sl. No.	Title	Date of the Gazette of India in which these Ordinance/ Acts were published
1.	The Fugitive Offenders Ordinance, 2018 (Ordinance No. 1 of 2018).	21-4-2018
2.	The Criminal Law (Amendment) Ordinance, 2018 (Ordinance No. 2 of 2018).	21-4-2018
3.	The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 (Ordinance No. 3 of 2018).	3-5-2018
4.	The Homeopathy Central Council (Amendment) Ordinance, 2018 (Ordinance No. 4 of 2018).	18-5-2018
5.	The Repealing and Amending (Second) Act, 2017 (Act No. 2 of 2018).	8-1-2018
6.	The Indian Institutes of Petroleum and Energy Act, 2017 (Act No. 3 of 2018).	8-1-2018
7.	The Repealing and Amending Act, 2017 (Act No. 4 of 2018).	8-1-2018
8.	The Indian Forest (Amendment) Act, 2017 (Act No. 5 of 2018).	8-1-2018
9.	The Appropriation (No.5) Act, 2017 (Act No. 6 of 2018).	19-1-2018
10.	The National Bank for Agriculture and Rural Development (Amendment) Act, 2018 (Act No. 7 of 2018).	19-1-2018

11.	The Insolvency and Bankruptcy Code (Amendment) Act, 2018 (Act No. 8 of 2018)	19-1-2018
12.	The Goods and Services Tax (Compensation to States) (Amendment Act, 2017 (Act No. 9 of 2018).	19-1-2018
13.	The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018 (Act No. 10 of 2018).	27-1-2018
14.	The Appropriation Act, 2018 (Act No. 11 of 2018)	27-1-2018
15.	The Companies (Amendment) Act, 2017 Act, 2015 (Act No. 1of 2018).	3-1-2018
16.	The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2017 (Act No 32 of 2017).	31-12-2017
17.	The Indian Institutes of management Act, 2017 (Act No. 33 of 2017).	31-12-2017

By order,

YASHWANT SINGH CHOGAL,
LR-cum-Pr. Secretary (Law).

लोक निर्माण विभाग

अधिसूचना

शिमला–2, 06 जून, 2018

सं0पी0बी0डब्ल्यू0(बी0)एफ(5) 47 / 2017.––यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव मौलाघाट, मौजा कोहला, तहसील नादौन, जिला हमीरपुर, हिमाचल प्रदेश में जालन्धर–होशियारपुर–गगरेट–मुबारिकपुर–अम्ब–नादौन–हमीरपुर–टौणीदेवी–अवाहदेवी–धर्मपुर–कोटली राष्ट्रीय उच्च मार्ग–70 (नया 03) कि0मी0 108 / 732 से कि0मी0 108 / 750 पर सडक के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद् द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भूमि अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (2013 का 30) की धारा–11 के उपबन्धों के अन्तगत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश

करने और सर्वेक्षण करने तथा उप धारा द्वारा अपेक्षित अथवा अनुमतः अन्य सभी कार्यो को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपति हो तो वह इस अधिसूचना के प्रकाशित होने के साठ दिन की अवधि के भीतर लिखित रूप में भू.अर्जन समाहर्ता, लोक निर्माण विभाग, मण्डी, (हि0 प्र0) के समक्ष अपनी आपति दायर कर सकता है।

विवरणी

जिला	तहसील	गांव	खसरा न0	रकवा (है0में)
हमीरपुर	नादौन	मौलाघाट	747 / 439	0–07–06
			748 / 439	0–28–61
			325	0–56–91
			कित्ता.. 3	0–92–58

आदेश द्वारा,

मनीषा नंदा,
अति0 मुख्य सचिव (लोक निर्माण)।

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ब अदालत श्री विपन ठाकुर, सहायक समाहर्ता प्रथम श्रेणी / कार्यकारी दण्डाधिकारी, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

श्री महेन्द्र कुमार पुत्र श्री मंगत राम, निवासी गांव शिन्ती, डा0 गानवी, तहसील रामपुर बुशैहर, जिला शिमला, हि0 प्र0।

बनाम

आम जनता

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969

नोटिस बनाम आम जनता।

श्री महेन्द्र कुमार पुत्र श्री मंगत राम, निवासी गांव शिन्ती, डा0 गानवी, तहसील रामपुर बुशैहर, जिला शिमला, हि0 प्र0 ने इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र पेश किया है जिसके अनुसार प्रार्थी अपनी बेटी रिहाना की जन्म तिथि 01–06–2015 का पंचायत अभिलेख में अज्ञानतावश दर्ज नहीं करवा सका। प्रार्थी जिसका इन्द्राज अब ग्राम पंचायत लबाना सदाना के पंचायत अभिलेख में दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि महेन्द्र कुमार की पुत्री कु0 रिहाना की जन्म तिथि 01–06–2015 को पंचायत अभिलेख में दर्ज करने बारा यदि किसी को कोई उजर व एतराज हो तो वह दिनांक 26–6–2018 को या इससे पूर्व अदालत हजा में आकर असालतन / वकालतन लिखित एवं मौखिक एतराज पेश करें। बाद गुजरने मियाद अपील कोई भी उजर व एतराज काबले समायत नहीं होगा तथा नियमानुसार पंचायत अभिलेख में प्रार्थी की पुत्री का नाम व जन्म तिथि दर्ज करने के आदेश पारित किये जाएंगे।

आज दिनांक 24–05–2018 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। विपन ठाकुर,
सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

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ब अदालत श्री विपन ठाकुर, सहायक समाहर्ता प्रथम श्रेणी / कार्यकारी दण्डाधिकारी, तहसील रामपुर बुशैहर, जिला शिमला (हि0 प्र0)

श्री केहर सिंह पुत्र श्री दुर्गा नन्द, निवासी गांव धारला, डा0 गानवी, तहसील रामपुर बुशैहर, जिला शिमला, हि0 प्र0।

बनाम

आम जनता

उनवान मुकद्दमा.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969

नोटिस बनाम आम जनता।

श्री केहर सिंह पुत्र श्री दुर्गा नन्द, निवासी गांव धारला, डा0 गानवी, तहसील रामपुर बुशैहर, जिला शिमला, हि0 प्र0 ने इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र पेश किया है जिसके अनुसार प्रार्थी अपने परिवार का इन्द्राज ग्राम पंचायत रिकार्ड में अज्ञानतावश दर्ज नहीं करवा सका। प्रार्थी जिसका इन्द्राज अब ग्राम पंचायत लबाना सदाना के पंचायत अभिलेख में दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण को सूचित किया जाता है कि केहर सिंह के परिवार का नाम व जन्म तिथि पंचायत अभिलेख में दर्ज करने बारा यदि किसी को कोई उजर व एतराज हो तो वह दिनांक 26–6–2018 को या इससे पूर्व अदालत हजा में आकर असालतन / वकालतन लिखित एवं मौखिक एतराज पेश करे। बाद गुजरने मियाद अपील कोई भी उजर व एतराज काबले समायत नहीं होगा तथा नियमानुसार पंचायत अभिलेख में प्रार्थी के परिवार का नाम व जन्म तिथि दर्ज करने के आदेश पारित किये जाएंगे।

	नाम	**जन्म तिथि**
1.	लाल सिंह पुत्र श्री केहर सिंह	12–12–1986
2.	मीनू पुत्री श्री केहर सिंह	03–03–1996
3.	प्रेमिला पुत्री श्री केहर सिंह	10–01–1997

आज दिनांक 24–05–2018 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। विपन ठाकुर,
सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
रामपुर बुशैहर, जिला शिमला (हि0 प्र0)।

ब अदालत श्री मुकेश रेपसवाल, उप–मण्डलाधिकारी (नागरिक), चौपाल, तहसील चौपाल, जिला शिमला, हिमाचल प्रदेश

श्रीमती अनिता पत्नी श्री कमल, गांव दवडा, डाकघर ग्याह, ग्राम पंचायत मानू भाबिया, तहसील चौपाल, जिला शिमला, हिमाचल प्रदेश।

बनाम

आम जनता

प्रधान, ग्राम पंचायत मानू भाबिया, तहसील चौपाल, जिला शिमला।

विषय.––प्रार्थिया की बेटी का नाम व जन्म तिथि ग्राम पंचायत मानू भाबिया के जन्म पंजीकरण रजिस्टर में दर्ज करवाए जाने बारे। कि अधीन धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

इश्तहार :

हर खास व आम जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थिया श्रीमती अनिता ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन–पत्र प्रस्तुत किया है कि उसने अपनी बेटी का नाम व जन्म तिथि ग्राम पंचायत मानू भाबिया के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है, अब प्रार्थिया अपनी बेटी का नाम व जन्म तिथि ग्राम पंचायत मानू भाबिया के जन्म पंजीकरण रजिस्टर में दर्ज करवाना चाहती है, जोकि इस प्रकार से है।

क्रम संख्या	नाम	सम्बन्ध	जन्म तारीख
1.	मोनिका	पुत्री कमल एवं अनिता	10–05–2018

अतः ग्राम पंचायत मानू भाबिया, तहसील चौपाल की जनता को बजरिया इश्तहार सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो तारीख 23–06–2018 को या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करे अन्यथा आवेदन–पत्र पर जन्म पंजीकरण आदेश पारित करके सचिव, ग्राम पंचायत मानू भाबिया को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज दिनांक 23–05–2018 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर।

मुकेश रेपसवाल,
उप–मण्डलाधिकारी (नागरिक),
चौपाल, जिला शिमला (हि0 प्र0)।

In the Court of Shri Chander Mohan Thakur, Executive Magistrate (Naib-Tehsildar) Solan, District Solan, H. P.

In the matter of :

Smt. Veena w/o Sh. Sant Ram, r/o House No. 131, Ward No. 7, Circular Road Solan, Tehsil & District Solan, Himachal Pradesh . .*Applicant.*

Versus

General Public . .*Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Smt. Veena w/o Sh. Sant Ram, r/o House No. 131, Ward No. 7, Circular Road Solan, Tehsil & District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavit and other documents for enter the date of birth of her daughter named as Deepika Ballu who was born on 12-02-1986 at home House No. 131, Ward No. 7, Circular Road Solan, Tehsil Solan, but her date of birth could not be entered in the record of M.C. Solan.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for delayed registration of date of birth of Deepika Ballu d/o Sh. Sant Ram Ballu and Smt. Veena Ballu may submit their objection in writing or appear in person in this court on or before 30th June, 2018 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 31st day of May, 2018.

Seal. CHANDER MOHAN THAKUR,
Executive Magistrate (Naib-Tehsildar),
Solan, District Solan, H. P.

In the Court of Shri Chander Mohan Thakur, Executive Magistrate (Naib-Tehsildar) Solan, District Solan, H. P.

In the matter of :

Smt. Veena w/o Sh. Sant Ram, r/o House No. 131, Ward No. 7, Circular Road Solan, Tehsil & District Solan, Himachal Pradesh . .*Applicant.*

Versus

General Public . .*Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Smt. Veena w/o Sh. Sant Ram, r/o House No. 131, Ward No. 7, Circular Road Solan, Tehsil & District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavit and other documents for enter the date of birth of her daughter named as Krishma who was born on 02-09-1993 at home House No. 131, Ward No. 7, Circular Road Solan, Tehsil Solan, but her date of birth could not be entered in the record of M.C. Solan.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for delayed registration of date of birth of Krishma d/o Sh. Sant Ram Ballu and Smt. Veena Ballu may submit their objection in writing or appear in person in this court on or before 30th June, 2018 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 31st day of May, 2018.

Seal.

CHANDER MOHAN THAKUR,
Executive Magistrate (Naib-Tehsildar),
Solan, District Solan, H. P.

In the Court of Shri Chander Mohan Thakur, Executive Magistrate (Naib-Tehsildar) Solan, District Solan, H. P.

In the matter of :

Smt. Veena w/o Sh. Sant Ram, r/o House No. 131, Ward No. 7, Circular Road Solan, Tehsil & District Solan, Himachal Pradesh . .*Applicant.*

Versus

General Public . .*Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Smt. Veena w/o Sh. Sant Ram, r/o House No. 131, Ward No. 7, Circular Road Solan, Tehsil & District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavit and other documents for enter the date of birth of her daughter named as Preeti who was born on 24-12-1981 at home House No. 131, Ward No. 7, Circular Road Solan, Tehsil Solan, but her date of birth could not be entered in the record of M.C. Solan.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for delayed registration of date of birth of Preeti Ballu d/o Sh. Sant Ram Ballu and Smt. Veena Ballu may submit their objection in writing or appear in person in this court on or before 30th June, 2018 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 31st day of May, 2018.

Seal.

CHANDER MOHAN THAKUR,
Executive Magistrate (Naib-Tehsildar),
Solan, District Solan, H. P.

In the Court of Shri Chander Mohan Thakur, Executive Magistrate (Naib-Tehsildar) Solan, District Solan, H. P.

In the matter of :

Sh. Ajay Kumar Guru s/o Late Sh. Ashok Kumar, r/o Ajay Cloth House Ganj Bazar, Tehsil & District Solan, Himachal Pradesh . . *Applicant.*

Versus

General Public . . *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Sh. Ajay Kumar Guru s/o Late Sh. Ashok Kumar, r/o Ajay Cloth House Ganj Bazar, Tehsil & District Solan, Himachal Pradesh has moved an application before the undersigned under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavit and other documents for enter the date of birth *i.e*. 12-03-1971 at the above residence Ajay Cloth House Ganj Bazar Solan, Tehsil Solan, Himachal Pradesh but his date of birth could not be entered in the record of M.C. Solan, Tehsil & District Solan.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for delayed registration of date of birth of Ajay Kumar may submit their objection in writing or appear in person in this court on or before 30-06-2018 at 10.00 A.M. failing which no objection will be entertained after expiry of date.

Given under my hand and seal of the court on this 31st day of May, 2018.

Seal.

CHANDER MOHAN THAKUR,
Executive Magistrate (Naib-Tehsildar),
Solan, District Solan, H. P.

In the court of Chhavi Nanta, Sub-Divisional Magistrate, Arki,
District Solan, H. P.

Case No. : 02/ 2018 Date of Institution : 03-06-2018

Shri Ranjeet Singh s/o Shri Shyam Lal, resident of Village Patta, P.O. Jai Nagar, Tehsil Arki, District Solan, H. P. . . *Applicant.*

Versus

General Public ..*Respondents.*

Regarding delayed registration of Birth event under section 13(3) of the Birth and Death Registration Act, 1969.

Proclamation :

Shri Ranjeet Singh s/o Shri Shyam Lal, resident of Village Patta, P.O. Jai Nagar, Tehsil Arki, District Solan, H. P. has moved an application under section 13(3) of Birth & Death Registration Act, 1969 alongwith affidavits and other documents stating therein that he was born on 03-09-1988 at village Patta, P.O. Jai Nagar, Tehsil Arki, but his date of birth could not be entered in the birth records of Gram Panchayat Materni, Tehsil Arki, District Solan H.P. by the parents of applicant.

Therefore, by this proclamation the general public is hereby informed that any person having any objection for the registration of delayed date of birth of Ranjeet Singh s/o Sh. Shyam Lal, may submit their objections in writing in this office on or before 09-07-2018 at 10.00 A.M. failing which no objection will be entertained after expiry of date of hearing.

Given under my hand and seal of this office on this 3rd day of June, 2018.

CHHAVI NANTA, HAS,
Sub-Divisional Magistrate,
Arki, District Solan, H. P.

In the Court of Sub-Divisional Magistrate, Kandaghat, District Solan exercising the powers of Marriage Officer, Kandaghat, Distt. Solan, H.P.

In Ref. :

1. Sh. Narinder Kumar son of Sh. Ramesh Singh, age about 25 years, resident of Village Sainj, P.O. Kawarag, Tehsil Kandaghat, Distt. Solan, H.P.

2. Smt. Sandeep Kaur daughter of Sh. Karan Singh age about 22 years, resident of Village Shadipur Momian, Tehsil Patran, District Patiala, Punjab .....*Applicants.*

VS

General Public ....*Respondent.*

Order

An application under section 15 of the Special Marriage Act, 1954 has been received in this court from Sh. Narinder Kumar son of Sh. Ramesh Singh, age about 25 years, resident of Village Sainj, P.O. Kawarag, Tehsil Kandaghat, Distt. Solan, H.P. (Bridegroom) and Smt. Sandeep Kaur daughter of Sh. Karan Singh age about 22 years, resident of Village Shadipur Momian, Tehsil Patran, District Patiala, Punjab (Bride) to register their marriage u/s 15 of the Special Marriage Act, 1954. Before taking further action in the said application, objections from the general public are invited for the registration of this marriage. Objections in this regard should reach to this court on or before 06-07-2018 failing which the marriage shall be got registered as per the provisions of the law.

Issued on 06-06-2018 under my hand and seal of the court.

Seal.

DR. SANJEEV DHIMAN, HAS,
Marriage Officer-cum-*Sub-Divisional Magistrate,*
Kandaghat, District Solan,H.P.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है